



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Authorizing City Manager and Treasurer to Execute Agreements for Remit Plus Software, Merchant Card Services and Remote Deposit Services with Jack Henry and Associates, Inc., Elavon, Inc., and Farmers & Merchants Bank of Central California, and Direct City Manager and Treasurer to Negotiate a Banking Services Contract with Farmers & Merchants Bank

MEETING DATE: November 16, 2011

PREPARED BY: Treasurer

RECOMMENDED ACTION: Adopt resolution authorizing City Manager and Treasurer to execute agreements for Remit Plus Software, Merchant Card Services and Remote Deposit Services with Jack Henry and Associates, Inc., Elavon, Inc., and Farmers & Merchants Bank of Central California, and direct City Manager and Treasurer to negotiate a banking services contract with F&M Bank.

BACKGROUND INFORMATION: In May 2011, staff brought forward recommendations for award of banking services based upon responses received to a Request for Proposals issued in February 2011. Council directed staff to obtain additional information and bring the matter back at a later date.

Since the May Council meeting, staff has had discussions with a number of the proposing banks regarding the services required by the City. As Council will recall, the City separated banking services into Mandatory Services and Optional Services. Staff is recommending that action be taken on the Optional Services as discussed below and recommending that Council direct the City Manager and Treasurer to negotiate a contract with Farmers and Merchants Bank of Central California (F&M Bank) for Mandatory Services.

Lockbox

Staff requested proposals for a classic lockbox-type service wherein customers would mail their utility payments to a post office box and a third party would process those payments and deposit funds into the City's bank account. The desire to contract out this service was driven by significant costs associated with replacing outdated, worn-out equipment. Staff had initially recommended award of this service to Bank of America at a five-year cost of \$182,661.

F&M Bank subsequently brought an alternative proposal to the City utilizing a Jack Henry and Associates product called Remit Plus. Staff viewed a demonstration of the product and checked references on other California cities that currently use this product, including a site visit to one customer. Staff was impressed with the ease of use of both the hardware and software and small footprint of the hardware. Current customers rated the product very highly. One-time hardware and software costs total \$20,389. Annual software maintenance costs are \$2,306.25. Monthly processing fees based upon a transaction

APPROVED:

Konradt Bartlam, City Manager

volume of 12,400 items per month are \$1,118. Total five-year costs, including one-time costs, are \$99,000. Staff estimates five-year costs for maintaining the status quo operation at about the same as that of the Bank of America lockbox proposal (approximately \$182,000). The recommended solution will save the City an estimated \$83,661 over the five years.

Merchant Card Services

The City accepts a variety of debit and credit card products as a way for our customers to pay for fees and services. The City is currently on a "Tiered and Category" pricing structure and it is proposed to move to an "Interchange **Plus**" fee basis. Staff had initially recommended that services be awarded to Elavon, based upon its proposal submitted with the Bank of the West proposal.

F&M Bank subsequently brought forward a proposal from Elavon to move the City to an Interchange Plus pricing structure, at a pricing structure slightly better than that provided in the Bank of the West proposal. Further, F&M Bank proposes to retroactively apply the new pricing structure, giving the City a refund of past fees totaling \$12,000. Based upon the quantities used in the Request for Proposals and the revised pricing, total five-year costs (excluding interchange fees) would be \$19,129, or \$2,903 lower than Bank of the West/Elavon. Total City costs for merchant card services (including interchange fees) for the period of April 2010 through March 2011 were \$63,266 under the Tiered and Category pricing structure. Total costs for merchant card services for the same timeframe under the Interchange Plus fee structure would have been \$51,030, a savings of \$12,236. Extrapolating this savings over a five-year period yields savings of \$61,180.

Remote Deposit Capture

Remote Deposit Capture (RDC) is a banking service that allows for the conversion of a paper check into electronic media that can be processed through the banking system. RDC will speed up the deposit process by allowing electronic deposit of checks instead of the current process of posting in Finance and transmittal to the bank via courier. This service is targeted for locations other than Finance that take payments. Staff had initially recommended award of this service to Bank of the West.

F&M Bank has developed an offering at a significantly reduced per-item fee and will provide the hardware without charge to the City. Total costs are estimated to be \$7,702 over a five-year period as compared to the \$12,144 proposed by Bank of the West. Further, this service will be expanded into outlying departments that accept checks so that such payment may be converted to electronic media and processed immediately. The expanded services are included in the estimated costs noted above. Adopting this service will save the City a penny per transaction over continuing the paper processing and increase the City's funds availability. Estimated cost savings over a five-year period will amount to about \$1,500.

Banking Services Contract

Staff is seeking authority from the Council to negotiate a banking services contract with F&M Bank with the following basic terms:

- Five-year term, with option to extend for up to two years
- Fixed pricing for the term of the contract
- Basic banking services to include, but not be limited to, deposit processing, electronic funds transfers, direct deposit, positive pay services, account reconciliation and appropriate collateralization
- Earnings credit rate of at least 0.75 percent
- Clearly defined reserve requirements, exposure limitations and security interest levels
- Liability commensurate with exposure

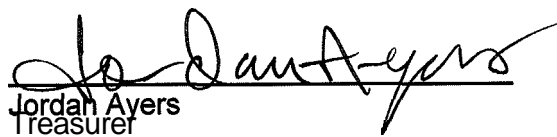
Banking services is one of the few services the City receives that is not backed by a comprehensive written contract. Best business practices would dictate that such services are defined in a written contract.

FISCAL IMPACT

Approval of the agreements for Remit Plus, Merchant Card Services and Remote Deposit Capture services will cost the City approximately \$125,800 over a five-year period, including one-time costs of \$20,389. Approval of the Merchant Card Services agreement will generate a refund to the City of \$12,000, partially offsetting the one-time costs for hardware and software for Remit Plus. Securing a long-term banking services agreement will provide for known costs over the term of the agreement.

FUNDING AVAILABLE:

FY 2011/12 costs budgeted across various business units. Additional one-time costs for Remit Plus hardware and software will be absorbed within Finance Division appropriations. Future year costs will be included in budgets presented for adoption.



Jordan Ayers
Treasurer

JA/ja

Attachments



MASTER SOFTWARE LICENSE AGREEMENT
ProfitStars® Software

OFFICE ADDRESS OF JHA:

Jack Henry & Associates, Inc.
663 West Highway 60
Monett, MO 65708

DATE: October 24, 2011

NAME AND ADDRESS OF CUSTOMER:

City of Lodi
221 W. Pine Street
Lodi, CA 95240

Jack Henry & Associates, Inc., acting through its Profitstars Division ("JHA"), is engaged in the business of licensing computer software and providing related services for use by organizations. **By** their execution of this Agreement, Customer agrees to obtain from JHA, and JHA agrees to furnish to Customer, on the terms and conditions contained herein, all of the computer software products and associated maintenance support and professional services detailed in Exhibit A and addenda to this Agreement.

JHA and Customer agree as follows:

1. JHA grants and Customer accepts a non-transferable (except as authorized herein) and non-exclusive license (the "License") to use the Software described in Exhibit A or an addendum to this Agreement during the term of this Agreement.

2. The License granted to Customer shall be subject to all Standard Terms and Conditions set forth in this Agreement, Exhibit A and any additional attached Exhibit or addenda documents (if any), all of which are incorporated in and specifically made a part of this Agreement.

The Standard Terms and Conditions shall apply in all events except where specifically superseded in Exhibit A or superseded as to individual items of Software in the additional attached Exhibit or addenda documents (if any).

In witness of this agreement, authorized representatives of the parties have signed this Agreement where provided below, in duplicate copies.

JHA:
Jack Henry & Associates, Inc.
Profitstars Division

Customer:
City of Lodi

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

JS: 87388
Sales Rep: Gary Holt

ProfitStars® Software
Standard Terms and Conditions

1. DEFINITIONS

1.1 "Affiliates" means the parent company of a party; a subsidiary of a party in which the party owns controlling ownership interest; or a subsidiary of a party's parent company in which the parent company owns controlling ownership interest.

1.2 "Confidential Information" includes, but is not limited to, the following types of information and other information of a similar nature whether provided in writing (whether marked as confidential or not), orally, or on magnetic disk or tape or by any other means or medium whatsoever: (a) trade secrets, software, documentation, systems, procedures, manuals, confidential reports, business plans and customer lists; (b) nonpublic personal information and data of Customer's customers and consumers which is subject to applicable data privacy laws and regulations ("PI Data"); and (c) the terms and conditions of this Agreement and each Exhibit or addendum to this Agreement. Notwithstanding the foregoing, Customer may disclose the provisions of this Agreement in accordance with the Open Records laws of the State of California.

1.3 "Customization" means any modification of the Software program code and/or Documentation made by JHA pursuant to a Services order executed between JHA and Customer. Once incorporated with the Software programs, a Customization becomes an integrated part of the Software program and will be deemed as Software for the purpose of this Agreement.

1.4 "Documentation" means all installation, operating instruction and end user manuals, in hard copy or electronic form, provided by JHA with the Software programs to support the use and operation of the Software programs.

1.5 "Enhancements" mean new Software program features or functions provided by JHA to Customer and other Software Customers as part of Maintenance which are not licensed by JHA separately for an additional License fee payable by its customers generally. Once installed by Customer, Enhancements become an integrated part of the Software.

1.6 "Error" means (a) with respect to Software, any malfunction of a Software program feature or function that causes the program not to operate in accordance with its Documentation; and (b) with respect to Professional Services, any nonconformity of the Professional Services with the warranty stated in Section 5.1 below.

1.7 "License" means the licensed rights granted to Customer to install and use the Software as provided in this Agreement.

1.8 "Maintenance" means the Software maintenance support performed by JHA under this Agreement to provide Error correction services and deliver Updates and Enhancements for the Software to Customer.

1.9 "Professional Services" means any Software installation, conversion, customization, consulting, training or other services performed by JHA to assist in Customer's implementation of the Software.

1.10 "Software" means the JHA software programs identified in Exhibit A to this Agreement and any subsequent addendum to this Agreement; Documentation accompanying the software programs; and all Enhancements, Updates, Upgrades, Customizations, and modifications thereto.

1.11 "Third Party Software" means any software program and accompanying documentation that is identified as a Third Party Software product in Exhibit A or an addendum to this Agreement and is owned and licensed by a party other than JHA.

1.12 "Updates" means periodic Software program fixes, patches and releases issued by JHA to correct Errors reported in the Software

programs as part of standard Maintenance. Once installed by Customer, Updates become an integrated part of the Software.

1.13 "Upgrades" means new versions of the Software issued by JHA which include major new features and functionality for which JHA requires the payment of a separate license fee from its customers generally.

2. SCOPE OF AGREEMENT

2.1 This Agreement pertains to Software Licenses, Maintenance and Professional Services acquired by Customer and its Affiliates from JHA and its Affiliates. The initial transaction is identified in Exhibit A to this Agreement. Subsequent Software License, Maintenance and/or Professional Services transactions will be documented in separate addenda, Statements of Work or services orders executed between the parties.

2.2 Affiliates of JHA and Customer may transact business together and participate in this Agreement by executing separate addenda, Statements of Work and services orders pertaining to Software Licenses, Maintenance and Professional Services which specifically reference this Agreement. In such instances, all references to JHA in this Agreement shall be read to apply to the JHA Affiliate and all references to Customer in this Agreement shall be read to apply to the Customer Affiliate, unless otherwise specifically indicated in an individual addendum.

2.3 This document establishes the terms and conditions that will apply to and govern the JHA product Software Licenses acquired by Customer from JHA. With respect to Third Party Software products acquired by Customer from JHA, the third party owner's software license agreement accompanying those products will govern Customer's use. For a particular Software product, a supplemental exhibit or addendum document may be included with this Agreement that provides terms and conditions applicable specifically to that Software product. The defined terms shown in Section 1 (Definitions) above shall have the same meaning in any supplemental exhibit or addendum document incorporated as a part of this Agreement. In the event of any conflict between a provision in this Standard Terms and Conditions document and a supplemental exhibit or addendum document, the provision of the supplemental exhibit or addendum document will govern and control with respect to the particular Software product covered by the supplemental exhibit or addendum document.

2.4 JHA may offer for sale to Customer certain third party hardware for Customer's use with the Software. All hardware and any related installation and maintenance services provided by JHA to Customer shall be documented in accordance with a separate hardware agreement between the parties.

3. FEES

3.1 Customer shall pay to JHA the fees, payments and expenses set out in the attached Exhibit A and any subsequent addendum to this Agreement, for the Software Licenses, Maintenance and Professional Services described in the Exhibit A addendum, Statement of Work or services order. All fees will be quoted, invoiced and payable in U.S. dollars, unless otherwise indicated in Exhibit A or an individual addendum, Statement of Work or services order.

3.2 Customer shall promptly reimburse JHA for all actual, reasonable out-of-pocket expenses incurred by JHA's personnel traveling to and from Customer's site to perform Professional Services. JHA will incur these expenses in accordance with JHA's corporate travel policies and procedures and will invoice these expenses to Customer on a monthly basis as incurred. A copy of JHA's corporate travel policies will be provided to Customer upon request. In addition, JHA will apply reasonable efforts to comply with Customer's written corporate travel policy requirements communicated by Customer to JHA in advance of JHA's booking of reimbursable travel to and from Customer's location.

3.3 Customer shall be responsible to pay all taxes, duties and other charges which may be imposed by a government entity on the transactions completed under this Agreement, except for taxes based on JHA's revenue or income. If Customer is exempt from paying taxes on the transactions, Customer shall deliver a copy of its then-current tax exemption certificate, which JHA shall be entitled to rely upon in not invoicing Customer for applicable taxes on the transaction.

4. SOFTWARE LICENSE

4.1 In consideration of Customer's payment of the Software License fees for each copy of the Software licensed by Customer as shown in Exhibit A or an addendum to this Agreement, JHA grants to Customer the following non-transferable (except as authorized herein) and non-exclusive License rights, subject to the restrictions stated below:

- (a) Customer may install the Software copy on its computers and access and use the Software copy solely for its internal operations and in its deployment environment, in accordance with the scope and metrics of the License described in Exhibit A or an addendum to this Agreement and pursuant to the terms and conditions of this Agreement. Customer may acquire additional License copies of the Software for use in Customer's production and nonproduction deployment environments (e.g. development, testing and disaster recovery).
- (b) The Software copy shall be used only to process data of Customer's organizations and Affiliates listed in Exhibit A or an addendum to this Agreement, in one operating environment, in one data library on one or more computers operated only by Customer's employees or contractors or the employees or contractors of such Affiliates. Customer shall use the Software only at the site locations of Customer and its Affiliates that are identified in Exhibit A or an addendum to this Agreement.
- (c) For Software which is designated as server-based Software, Customer shall be entitled to install, access and use the Software copy programs on a single server computer located at Customer's site identified in Exhibit A or an addendum to this Agreement. Customer may transfer the installation of the Software copy programs to another server at Customer's site by giving JHA prior written notice and the full installation details of the new Customer site of the installation so that JHA can issue any new license keys required for operation of the Software on a different server.
- (d) For Software which is designated as being workstation-based Software, Customer may install the Software copy programs on the number of Customer-owned client workstations and access the Software programs up to the maximum limit of the authorized users shown in Exhibit A or an addendum to this Agreement for the workstation License purchased by Customer.
- (e) For Software which is licensed by an individual operating system, database system, internet browser, hardware or other technology platform type, Customer shall be entitled to use the Software solely in conjunction with the technology platform with which the Software has been designed and certified by JHA or its licensors to operate. Licensing of the same Software product based on a different technology platform type by Customer may require the payment of separate License and Maintenance fees to JHA.
- (f) For Software which is designated as being a Software application template, Customer shall be entitled to modify and customize the Software application template programs in order to create and deploy a completed software application for deployment and use in Customer's operations.

Exhibit A or an addendum to this Agreement may include supplemental licensing terms and restrictions which pertain to the specific Software products identified therein.

4.2 Each License acquired by Customer to use the Software described in Exhibit A or an addendum to this Agreement shall be in effect for the period of time specified in Exhibit A or the addendum under which the Software was licensed, beginning upon the date of initial delivery of the Software products to Customer. If no license term period is specified, the default term period for any License shall be for twenty-Five (25) years. For any additional copies of the Software or additional components of the Software subsequently licensed by Customer, the license term period shall be coterminous with the license term period applicable to the original Software License acquired by Customer for the Software product(s).

4.3 Additional License fees will be due and payable by Customer to JHA for using the Software to process the data of additional Customer or Affiliate organizations other than those listed on Exhibit A; for an increase in the scope of its existing Software Licenses; or for licensing additional Software products or components.

4.4 Except as authorized in this Agreement, the License and the Software shall not be assigned, sublicensed, or otherwise transferred or copied in any manner by Customer without the prior written consent of JHA. The Software may not be installed or used by Customer in a timesharing, rental, ASP/hosted or service bureau environment, without the prior written consent of JHA. Customer shall be authorized to make up to three (3) copies of the Software for its own archival or back-up purposes only. Customer may print a reasonable number of hard copies of the online Documentation for the sole reference and use by individual users of the Software within Customer's organization. All authorized copies of the Software programs or Documentation made by Customer shall include all of the proprietary notices and legends included by JHA or its licensors on the original Software programs and Documentation.

4.5 Customer shall not disassemble, reverse engineer, decompile or perform any other action to determine the source code of the Software programs unless such action is authorized by applicable law, or create any derivative works from the Software programs or Documentation. Customer shall not remove or alter proprietary notices of JHA or its licensors on any of the Software programs or other materials associated with the Software.

4.6 Customer shall install and use the server-based Software only at the server site location of Customer specified in Exhibit A or an addendum to this Agreement. Customer further agrees that prior to providing any functions performed by the Software to any other organization, Customer will require the other organization to sign JHA's standard performance guarantee regarding that organization's use of and access to the Software. However off-site testing and/or disaster processing is permitted provided the owner/operator of the off-site facility has signed JHA's Confidentiality Agreement, and JHA is promptly notified by Customer.

4.7 Customer also covenants and warrants to JHA that Customer's Affiliates and all other organizations authorized to access and use the Software and off-site test/disaster facilities shall conform to, abide by and be governed and bound by this License Agreement as though they were Customer. Customer accepts full responsibility and liability to JHA for any breach of this Agreement by Customer's Affiliates and any other organization granted access to the Software by Customer and/or in an off-site test/disaster facility used by Customer. If Customer, its Affiliates or any other organization accessing the Software and/or in an off-site test/disaster facility breaches this Agreement, and such breach is not corrected within thirty (30) days after Customer receives written notice of the breach from JHA, then JHA may terminate Customer's license to use the Software, and Customer shall immediately cease using the Software and shall return all copies of the Software to JHA.

4.8 For any Third Party Software products identified in Exhibit A or an addendum to this Agreement, the License granted to Customer for use of the Third Party Software is specified in and governed by the separate software license agreement provided by the owner of the Third Party Software with the Third Party Software programs or as identified in the supplemental exhibit or addendum pertaining to the Third Party Software product. JHA makes no separate License grant or extends any product warranties, indemnities and liabilities for Third Party Software to Customer. Any warranties or indemnities provided by the third party Software owner in its standard software end-user license agreement for the third party Software product shall exclusively apply to the product. JHA shall pass through to Customer for Customer's benefit all end-user

software warranties and indemnities that the third party Software owner provides directly to JHA.

4.9 JHA may incorporate license management functionality with the Software programs to restrict the access and use of the Software programs by Customer within the scope of the authorized License acquired by Customer. Customer shall not disable or take any actions to avoid or override the license management features of the Software programs. As a condition of licensing the Software to Customer, JHA may require that Customer identify the details of the server upon which the Software programs will reside. Upon JHA's written request to be issued not more frequently than once each calendar year, Customer shall furnish JHA with a written certification signed by an executive or senior manager of Customer verifying the location of the Software installation and acknowledging that Customer's use of the Software has been in continuous compliance with the terms of this Agreement.

4.10 If Customer is a U.S. government entity, the Software products and/or Services are provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the Government is subject to restrictions set forth in subparagraphs (a) through (d) of the Commercial Computer Software—Restricted Rights at FAR 52.227-19 when applicable, or in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, and in similar clauses in the NASA FAR supplement, as applicable.

5. WARRANTIES

5.1 JHA warrants to Customer that:

(a) For a period of ninety (90) days following JHA's delivery of the Software to Customer (the "Warranty Period"), the unmodified Software programs will operate in accordance with the Documentation in effect at the time of delivery. If Customer has contracted for JHA to perform the Software installation, the Warranty Period will commence on the date of Software installation at Customer's site (the "Implementation Date"). Under this warranty, JHA will apply commercially reasonable efforts to correct Errors in the Software reported by Customer during the Warranty Period at no extra charge to Customer. If JHA does not correct the Errors reported by Customer within thirty (30) days following the expiration of the Warranty Period, Customer may terminate this Agreement and receive a full refund of all fees paid by Customer to JHA for the affected Software covered by this warranty. Errors reported by Customer after expiration of the Warranty Period will be addressed by JHA solely in accordance with the Maintenance provisions of Section 15 (Software Maintenance) below. JHA does not warrant that the Software is Error-free or will operate in an uninterrupted manner.

(b) The Software furnished hereunder is free and clear of all liens and encumbrances, and JHA has full power and authority with respect to the Software to license the Software to Customer without the consent of any other person, or in the event such is required JHA has obtained all required consents.

(c) JHA will utilize commercially available virus protection software in order to ensure that the Software programs will be free from known viruses, bombs and other destructive elements which negatively affect Customer's use and operation of the Software.

(d) The Maintenance will be provided to Customer in a timely and professional manner consistent with software industry standards for maintenance support of commercial software products comparable to the Software products licensed by Customer under this Agreement.

(e) The Professional Services provided by JHA to Customer under this Agreement will be performed in a timely and professional manner consistent with software industry standards and in accordance with the requirements and specifications identified in Exhibit A, an addendum to this Agreement, or a separate Statement of Work or services order executed between the parties (whichever is applicable). These warranties are valid for a period of thirty (30) days commencing from the completion date of the Professional Services project. If Customer reports any Errors in the Professional Services to JHA within this warranty period, JHA shall re-perform the affected Professional Services at no additional charge to Customer. Upon completion of this second delivery of the Professional Services, Customer shall have an additional thirty day warranty period to confirm that the Professional Services conform to the warranty stated above. If the second delivery of

Professional Services does not correct the Errors in the Professional Services, then the affected Exhibit A addendum to this Agreement, Statement of Work, and/or services order (whichever is applicable) may be terminated by either party and JHA shall refund to Customer all fees and reimbursable expenses previously paid by Customer to JHA for the defective Professional Services.

THE WARRANTIES STATED IN THIS SECTION 5.1 ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES RELATING TO THE SOFTWARE, MAINTENANCE AND PROFESSIONAL SERVICES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

5.2 Each party warrants to the other party that:

(a) It has all requisite legal right, power and authority to execute and deliver this Agreement and each Exhibit, addendum, Statement of Work and services order executed against this Agreement, as a legal, valid and binding obligation of that party, which is enforceable against that party in accordance with its terms.

(b) There is no agreement or understanding with any third party that interferes with or will interfere with its performance of its obligations under this Agreement and any Exhibit, addendum, Statement of Work or services order executed against this Agreement.

6. OWNERSHIP

6.1 All Software and any other intellectual property furnished now or hereafter by JHA to Customer shall be and remain the exclusive property of JHA and its licensors, subject to the License rights granted to the Customer in this Agreement and Exhibit A and addenda to this Agreement. All Software provided by JHA to Customer under this Agreement is licensed and not sold.

6.2 All software programs, data, technology and any other intellectual property owned by Customer and its licensors and provided or made accessible to JHA under this Agreement shall be and remain the exclusive property of Customer and its licensors.

7. TRADE SECRETS

7.1 Customer acknowledges that the Software provided by JHA under this Agreement incorporates trade secrets of JHA and its licensors, and as such is protected by civil and criminal law, is very valuable to JHA and its licensors, and that its use must be carefully and continuously controlled. Customer shall use the highest standard of diligence to protect the confidentiality of the Software, but in no event exercising not less than reasonable care, and shall prohibit the unauthorized access to, use or duplication of any of the Software in its possession. Customer shall keep all machine-readable Software in a secure place which is as secure as Customer provides for its own confidential materials of like nature and importance. Customer shall notify JHA immediately of the unauthorized possession, use or knowledge of any item supplied under this Agreement by any person or organization not authorized by this Agreement to have such possession, use or knowledge. Customer shall promptly furnish JHA full details of such possession, use or knowledge, and shall cooperate fully with JHA in any litigation against third parties deemed necessary by JHA to protect its proprietary rights. Customer's compliance with the above shall not be construed in any way as a waiver of JHA's right to recover damages or obtain other relief against Customer for its negligent or intentional harm to JHA's proprietary rights or for Customer's breach of its contractual obligations to protect the confidentiality of the Software.

7.2 If Customer attempts or allows others to attempt to use, copy, duplicate, transcribe or convey the items supplied by JHA pursuant to this Agreement, in a manner contrary to the terms of this Agreement or in derogation of JHA's proprietary rights, whether these rights are explicitly herein stated, determined by law, or otherwise, JHA shall have, in addition to any other remedies available to it at law or equity, the right to seek injunctive relief enjoining such actions. Customer hereby acknowledges that in such instances irreparable harm will occur to JHA and that other remedies are inadequate.

8. COMPLIANCE WITH LAWS

8.1 Customer assumes all responsibility for using the Software in a manner that is in compliance with all laws and regulations relating to such use of the Software.

8.2 With respect to NPI Data disclosed under this Agreement, the parties shall comply with applicable data privacy and security laws and regulations pertaining to NPI Data, including but not be limited to the Gramm-Leach-Bliley Act ("GLBA") and the Health Insurance Portability and Accountability Act ("HIPAA").

8.3 The parties represent that they are equal opportunity employers and do not discriminate in the employment of persons or awarding of subcontracts because of a person's race, sex, age, religion, national origin, veteran or handicap status. Without limiting the foregoing, the parties agree to comply with applicable federal and state laws, regulations and orders pertaining to the activities contemplated by this Agreement, including but not limited to (a) Executive Order 11246, as amended or superseded in whole or in part, and as contained in Section 202 of the Executive Order as found at 41 C.F.R. § 60-1.4(a)(1-7); (b) Section 503 of the Rehabilitation Act of 1973 as contained in 41 C.F.R. § 60-741.4; and (c) The Vietnam Era Veterans' Readjustment Assistance Act of 1974 as contained in 41 C.F.R. § 60-250.4.

8.4 The Software and related technical data provided by JHA to Customer under this Agreement is of U.S. origin and therefore subject to U.S. export control laws and regulations. Both parties shall comply with all export control laws and regulations applicable to the export or re-export of the Software and technical data to persons or destinations prohibited or restricted by law.

9. SOFTWARE DELIVERABLES

9.1 The Software programs will be delivered to Customer in an object code format, unless otherwise specified in Exhibit A or an addendum to this Agreement.

9.2 The Documentation for the Software will be in electronic format unless otherwise noted in Exhibit A or an addendum to this Agreement and shall be complete and accurate so as to enable a reasonably skilled Customer user who has received JHA's training to effectively use all of its features and functions without assistance from JHA. The Documentation delivered to Customer shall be JHA's most current version applicable to the Software programs involved.

10. CONFIDENTIAL INFORMATION

10.1 All Confidential Information communicated by one party to the other party under this Agreement, whether before the effective date or during the term of this Agreement, shall be received in strict confidence and shall be used by the receiving party only for the purposes authorized by this Agreement. Except as provided below, Confidential Information shall not be disclosed by the receiving party to parties other than its employees, agents, contractors, auditors and advisors (collectively, the "Representatives"), without the prior written consent of the disclosing party. The receiving party shall ensure that each Representative given access to the disclosing party's Confidential Information shall be legally bound to honor and protect the Confidential Information of the disclosing party on terms consistent with the confidentiality obligations applicable to the receiving party under this Agreement. Each party agrees to take all reasonable precautions to prevent the unauthorized disclosure of the Confidential Information to third parties, including without limitation, the terms of this Agreement, except as the disclosure may be necessary or mandated by reason of legal, accounting or regulatory requirements beyond the reasonable control of JHA or Customer, as the case may be. The receiving party shall apply the same standard of care with respect to the disclosing party's Confidential Information that it applies to its own Confidential Information of like nature and importance, but in no event with less than a reasonable standard of care. If Third Party Software products or Professional Services are specified in Exhibit A or an Addendum to this Agreement, then JHA shall be authorized to disclose the terms and conditions of this Agreement to the owner of the Third Party Software products or Professional Services to fulfill its contract reporting obligations to the third party owner.

10.2 With the exception of NPI Data, the receiving party shall be under no obligation with respect to Confidential Information which (a) was in the public domain prior to the receipt of the information by the receiving party, or subsequently becomes part of the public domain by

publication or otherwise, except disclosure by or the wrongful act of the receiving party, its owners, officers, directors, employees, agents or representatives; (b) was in the lawful possession of the receiving party prior to its receipt from the disclosing party and was not acquired by the receiving party directly or indirectly from the disclosing party or any of disclosing party's customers, and the sources of such information had not obtained the information wrongfully and had no obligations of confidentiality or secrecy with respect thereto; (c) was independently developed by the receiving party without access to the Confidential Information; or (d) is provided by the disclosing party to another person or party without being subject to an obligation of confidentiality by the other person or party with respect to the Confidential Information. The receiving party has the burden of proving that the Confidential Information was subject to one or more of the above listed exceptions.

10.3 Confidential Information may be disclosed by the receiving party pursuant to a government or court order requiring such disclosure, provided that the receiving party has first notified the disclosing party of its receipt of the government or court order to disclose the disclosing party's Confidential Information and has given the disclosing party an opportunity to seek a protective order or other remedy limiting such disclosure without confidentiality obligations.

10.4 Each party confirms that it has implemented a written information security policy and program which is sufficient to meet its responsibilities under applicable data privacy and security laws and regulations and its confidentiality obligations under this Agreement.

10.5 If Customer wishes to reveal any portion of JHA's Confidential Information to any third party provider to Customer, Customer and the third party provider shall first execute JHA's standard three party confidentiality agreement prior to revealing the JHA Confidential Information to the third party provider.

10.6 All information and materials disclosed to the Customer at JHA's User Group conferences shall be treated as JHA's confidential Information. Nothing in this Section shall be interpreted to preclude or impede Customer's participation in any User's Group with respect to the Software.

11. PRIVACY AND SECURITY OF NPI DATA

11.1 In accordance with data privacy and security laws and regulations applicable to this Agreement, JHA shall not disclose or permit access to or use of any NPI Data made available by Customer to JHA for any purposes other than those specifically required to fulfill JHA's contractual obligations with Customer. JHA shall not sell the information regarding Customer's consumers for any reason. In connection with providing services to Customer, JHA shall take all commercially reasonable steps to ensure the privacy and security of the NPI Data and protect against anticipated threats and hazards to the security of the NPI Data. JHA shall take all commercially reasonable steps to prevent unauthorized access to or use of the NPI Data that could result in substantial harm or inconvenience to Customer or its customers or consumers. JHA has implemented policies and procedures to ensure the proper disposal of the NPI Data in accordance with applicable federal and state requirements. In the event any court or regulatory agency seeks to compel disclosure of the information, JHA shall, if legally permissible, promptly notify Customer of the disclosure requirement and will cooperate so that Customer may at its expense seek to legally prevent this disclosure of the information.

11.2 JHA has separately published its data privacy and security compliance commitment to its customers, which corresponds at a minimum to the provisions of this Section 11 as of the effective date of this Agreement. To the extent that additional commitments by JHA are reflected in future published versions of this policy, these additional commitments shall be incorporated as part of this Agreement without further actions by the parties. In no event shall a future published data privacy and security compliance statement issued by JHA lessen or eliminate any of the commitments by JHA stated in this Section 11.

11.3 If a breach of security results in an unauthorized intrusion into JHA's systems which directly and materially affects Customer or its customers or consumers, JHA will take appropriate measures to stop the intrusion; report on the intrusion to customer within a reasonable time after discovery of the intrusion; subsequently report the corrective action taken by JHA in response to the intrusion; and provide reasonable

assistance to Customer to support any mandatory disclosures about the intrusion by customer to its customers and consumers required by law. If JHA has notified law enforcement agencies about the intrusion, JHA may delay its notification of the intrusion to Customer until authorized to do so by the law enforcement agencies.

12. SOFTWARE DELIVERY

12.1 If Customer has not contracted with JHA to install the Software at Customer's location, delivery of the Software to Customer shall occur within thirty (30) days following (a) the execution of this Agreement, with respect to the Software originally licensed under this Agreement, and (b) the execution of any follow-on addendum to this Agreement, with respect to additional Software licensed under this Agreement. The Software will be delivered by physical shipment to Customer, or if JHA makes the Software available for electronic delivery, by download on an FTP site designated by JHA for this purpose.

12.2 If Customer has contracted for JHA to install the Software at Customer's location, the delivery of the Software will be scheduled to occur at the commencement of the Software installation project, for use by JHA Professional Services personnel to perform the installation. In such instance the delivery date shall be scheduled to occur not more than one hundred twenty (120) days following the mutual execution of this Agreement or an addendum to this Agreement (whichever is applicable) unless otherwise agreed by JHA. Customer and JHA may agree to stage the delivery and installation of individual Software products or components in phases, in order to allow Customer to begin productive use of those products and components in advance of the remaining Software products and components to be delivered and installed by JHA.

13. PROFESSIONAL SERVICES

13.1 If Customer has contracted for JHA to install the Software at Customer's location, JHA will install the Software at Customer's location specified in Exhibit A or an addendum to this Agreement, and will assist Customer in converting Customer and its Affiliates to production use of the Software. Prior to commencement of the project, JHA and Customer may enter into a separate Statement of Work or services order document which describes the project details and the specifications and requirements applicable to JHA's professional services delivery. Customer shall be responsible for providing all hardware, other third party software, and internet/network/infrastructure components necessary to install and operate the Software products in its production environment, which shall be installed by Customer and operational as of the scheduled commencement date of the Software installation project. All such installation environment components shall meet at a minimum the technical requirements stated in the Documentation relating to the Software. Customer will furnish data needed and requested by JHA to perform the installation and testing of the Software in Customer's test and production environments, and will co-operate with and assist JHA personnel in the installation and conversion of the Software in a timely manner and as reasonably requested by JHA. For the installation and conversion of the Software, Customer agrees to pay JHA the Professional Services fees described in Exhibit A, an addendum, the Statement of Work or the services order (as applicable) and reimburse JHA for reasonable out-of-pocket travel expenses incurred by JHA personnel traveling to and from Customer's location to perform the Professional Services.

13.2 JHA provides the following additional Professional Services for the Software:

- (a) Software Customizations;
- (b) Software training for Customer's employees concerning the operation and use of the Software; and
- (c) Consulting concerning Customer's electronic data needs, problems and solutions which may be addressed through Customer's use of the Software.

For the purchase and delivery of Professional Services not specified in Exhibit A or an addendum to this Agreement, the parties may document these Professional Services requirements in a separate Statement of Work or services order document executed by both parties which

identifies the mutually agreed Professional Services project details, specifications and requirements.

13.3 JHA may utilize subcontractor personnel to supplement its Professional Services delivery resources on a project to be performed by JHA for Customer. JHA will be and remain fully and solely liable and responsible for the performance and activities of its subcontractors participating in Customer's project, and JHA shall ensure that its subcontractors are legally bound to honor and protect Customer's Confidential Information to which the subcontractors have been provided access as part of the project activities, consistent with the confidentiality obligations of JHA under this Agreement. JHA will identify to Customer all subcontractor personnel participating in a Professional Services project to be conducted at Customer's location.

14. INSTALLATION VERIFICATION

The following provisions shall apply when Customer has contracted with JHA for installation of the Software at Customer's location:

14.1 When JHA has materially completed the installation of the Software programs in accordance with the written specifications and requirements of Exhibit A, an addendum to this Agreement, or a Statement of Work or services order executed between the parties (whichever is applicable), JHA will present to Customer an installation certificate, verifying that JHA has installed the Software and that the Software is fully installed, operational and ready to use in Customer's production environment and otherwise meets all of the applicable specifications and requirements. Customer shall have a reasonable opportunity to test and confirm JHA's verification of this compliance with these specifications and requirements, and upon completion of its testing, Customer shall sign and return the installation certificate to JHA. If Customer fails to provide the signed installation certificate to JHA within fifteen (15) business days after JHA has delivered the installation certificate to Customer and Customer has not identified material noncompliance with these specifications and requirements during that period, then the installation shall be deemed to be fully completed and compliance with these specifications and requirements fully achieved by JHA.

14.2 If during the fifteen (15) day business period specified above Customer discovers any material noncompliance with the applicable specifications and requirements, Customer shall immediately notify JHA in writing of the details of the noncompliance, and JHA shall address and resolve the reported noncompliance at no additional charge to Customer and issue a replacement installation certificate to Customer. In this event, Customer shall have a second opportunity within fifteen (15) business days following receipt of JHA's replacement installation certificate to confirm JHA's compliance with these specifications and requirements. If Customer fails to provide the signed installation certificate to JHA within this second fifteen (15) business day period after JHA has delivered the replacement installation certificate to Customer and Customer has not identified material noncompliance with these specifications and requirements during that period, then the installation shall be deemed to be fully complete and compliance with these specifications and requirements fully achieved by JHA.

14.3 If Customer identifies in writing to JHA further material noncompliance with the applicable specifications and requirements during this second fifteen (15) business day period, then the JHA and Customer shall either (a) mutually agree upon an additional course of action required to address and resolve the remaining noncompliance issues, or (b) Exhibit A or the addendum to this Agreement shall be terminated, Customer shall uninstall and return the affected Software and the hardware acquired by Customer from JHA for use with the Software, and JHA shall refund to Customer all fees paid by Customer under Exhibit A or the addendum to this Agreement for the affected Software and under the separate agreement for purchase of the hardware (if applicable).

15. SOFTWARE MAINTENANCE

15.1 During the term of this Agreement, in consideration of Customer's payment of the annual Maintenance fees for the Software, JHA will provide Customer with the following standard Maintenance for the Software:

(a) Updates and minor enhancements of the Software programs which are provided by JHA to other then-current active Maintenance customers of the Software.

(b) Customer support help-desk, for the reporting, handling and resolution of Software Errors discovered by Customer. JHA's standard customer support help desk hours of operation are specified in Exhibit A or the addendum applicable to the Software being maintained.

(c) Correction of Software Errors, including the delivery of program Error fix releases or PTF's.

JHA's provision of standard Maintenance and the applicable service level commitments pertaining to standard Maintenance delivery may be more particularly defined in JHA's published Maintenance policies and procedures relating to the specific Software products involved.

15.2 Customer, at its expense, will provide JHA with remote VPN communication access (or comparable remote access technology) to its server on which the Software has been installed to enable JHA to perform remote Software Maintenance diagnosis and troubleshooting activities. If remote dial up access is provided, Customer shall initiate the call for the remote support session. JHA shall comply with all IT system access and security policies and procedures communicated by Customer regarding authorized access to its IT systems.

15.3 JHA's provision of standard maintenance support described above shall apply only to the then-current major release of the Software and the immediately preceding major release of the Software. Support, if any, offered by JHA for older releases of the Software shall be provided under a separate Professional Services engagement.

15.4 Standard Maintenance excludes Software Errors or other problems caused or contributed to by any of the following:

(a) Errors or performance issues which originate in third party operating system, database system or other software programs which are utilized by Customer in conjunction with the Software;

(b) A modification of the Software not created by JHA or its subcontractors;

(c) Program Errors that were previously corrected by JHA and delivered to Customer in a Maintenance Update release which has not been installed by Customer;

(d) Inadequate hardware memory capacity or any problems with data on tape, disk or diskettes which have been caused by defects in hardware manufacturers programming;

(e) Failure of Customer to install hardware manufacturers operational/system software new Releases and/or Program Temporary Fixes (PTFs);

(f) Program Errors or problems which are the result of improper operator handling or use;

(g) Program Errors or problems which result from any program interface not provided by JHA which has been created or deployed by Customer or a third party with the Software;

(h) Program Errors or problems which result from equipment, software, networks, browsers, telecommunications or other IT infrastructure in Customer's IT environment or operating environment for the Software, which are not certified by JHA in the then-current Documentation to operate with the Software; or

(i) Program Errors or problems which originate from the World Wide Web.

15.5 Standard Maintenance excludes any retrofitting, reintegration, and recoding of any Customization which has been made to the Software in order for the Customization to work with any then-current release of the Software. Any such Professional Services agreed between JHA and Customer shall be documented in a separate Statement of Work or services order executed between JHA and Customer which includes the project specifications and details, scope of services deliverables, and services fees applicable to the Professional Services performed.

15.6 Standard Maintenance provided by JHA for customizable Software application templates which Customer licenses from JHA under this Agreement is expressly limited to delivery of future standard Updates to the unmodified, non-customized version of these Software application templates which JHA may issue and provide to its customers generally who have licensed the Software application templates. Any maintenance of Software application templates which have been customized and deployed by Customer as completed applications in its production environment is outside the scope of standard Maintenance provided by JHA and will require a separate Professional Services engagement and fees for JHA's provision of such maintenance. Any such Professional Services agreed between JHA and Customer shall be documented in a separate Statement of Work or services order executed between JHA and Customer which includes the project specifications and details, scope of maintenance services deliverables, and services fees applicable to the Professional Services performed.

15.7 Maintenance Fees:

(a) Customer will pay JHA the initial annual Maintenance fee set forth in Exhibit A or an addendum to this Agreement. After completion of the first full annual Maintenance term, this annual fee may be increased by JHA by no more than seven percent (7%) per year. Increases resulting from events described in paragraph (b) below are excluded from this limitation. JHA shall give Customer at least sixty (60) days written notice of any Maintenance fee increase, prior to the end of the then-current annual Maintenance term.

(b) The annual Maintenance fee will be increased if and when (i) Customer contracts with JHA for additional Software components; (ii) an increase in the scope of the License is acquired by Customer; (iii) Customization of the Software is contracted for by Customer from JHA; (iv) there is an increase in the net asset size of Customer which would trigger an increase in the Maintenance fees due for the Software, where those metrics are used to determine the amount of the Maintenance fees due from Customer; and/or (v) additional organizations not listed in Exhibit A or an addendum to this Agreement are permitted to access and use the Software covered by the Maintenance fee.

15.8 The commencement date of the initial annual Maintenance term for the Software products shall be:

(a) the date when the Software products have been installed and are ready for Customer's initial use in its production environment, if Customer has contracted with JHA to perform the installation of the Software products; or

(b) the date of JHA's delivery of the Software products to Customer, if Customer has not contracted with JHA to perform the installation of the Software products.

The initial annual Maintenance term commences on the commencement date specified above and expires on the next following June 30. The annual Maintenance term will automatically renew for successive terms of twelve (12) months each commencing on each July 1 thereafter, unless either party gives the following written notice of non-renewal of the annual Maintenance term to the other party in advance of the expiration of the then-current term:

(a) Notice by Customer to JHA: 30 days
(b) Notice by JHA to Customer: 180 days

16. BILLING TERMS

16.1 JHA's billing terms are payable net thirty (30) days from Customer's receipt of JHA's correct and valid invoice. Customer will pay JHA the lower of (a) 1.5% interest per month (18% annually) or (b) the highest interest rate chargeable by applicable law, plus all attorney fees and expenses actually incurred by JHA in collecting any delinquent or past due fees, payments or reimbursements of any kind which are valid and rightfully due to be paid by Customer to JHA. JHA reserves the right to halt the delivery of any Software, equipment, Maintenance or Professional Services if Customer is delinquent in the payment of any amounts due JHA, except where such amounts are legitimately in dispute.

16.2 In the event of a phased partial delivery and installation of the Software as specified in Section 12.2 above, JHA will bill Customer in project completion increments and Customer will pay JHA the License

and Maintenance fees pertaining to the Software products and components delivered and installed by JHA for which Customer begins to use productively in its operations, in advance of the remaining Software products and components to be delivered and installed by JHA for Customer.

17. INDEMNIFICATION

17.1 JHA shall defend, indemnify and hold harmless Customer against and from, any and all damages, losses and expenses (including reasonable attorneys fees) arising out of, in connection with, resulting from or based on allegations of, any third party claim that the JHA Software provided hereunder infringes any patent, copyright, trademark, trade secret or other intellectual property right recognized as valid and enforceable in the United States by law, treaty or international convention. JHA shall not be liable for any such infringement claim which arises out of: (a) any combination with the JHA Software with any other non-JHA software; or (b) any modification or customization of the JHA Software by Customer or any third party; or (c) any corrective JHA Software which is delivered by JHA to Customer but is not installed or implemented by Customer; or (d) use of the JHA Software programs not in compliance with its Documentation. In the event of an infringement claim based on or resulting from any of the foregoing, Customer shall indemnify, defend, and hold harmless JHA from and against all claims and actual losses, damages and expenses (including reasonable attorneys fees), related to, resulting from, or arising out of any of the foregoing.

17.2 In the event that Customer is enjoined, or is otherwise prohibited, from using any JHA Software as a result of or in connection with any claim described in Section 17.1, JHA promptly shall, at its sole expense: (a) procure for Customer the right to continue to use the JHA Software; (b) modify the JHA Software so that it becomes noninfringing, without substantially diminishing the form, features, functionality or performance of the JHA Software; or (c) replace the JHA Software with JHA Software that is noninfringing with materially equivalent form, features, functionality and performance. In the event that JHA cannot, after using its best efforts to do so within a reasonable period of time, procure, modify or replace the JHA Software involved then JHA shall terminate Customer's right to use the JHA Software, giving Customer at least ninety (90) days advance written notice of this termination if legally permitted to do so. Upon termination, JHA will refund a prorated amount of the License fees paid by Customer based on a five (5) year straight-line depreciation schedule commencing from the date of installation of the Software involved, and if applicable the unused amount of the then-current annual Maintenance fees paid by Customer for the Software involved.

17.3 With respect to Professional Services performed by JHA at Customer's location, each party shall defend, indemnify and hold harmless the other party against and from, any and all damages, losses and expenses (including reasonable attorneys fees) that the other party may suffer or incur that arise out of, are connected with or result from bodily injuries (including death, no matter when death occurs) or damages to property that are caused by, arise out of, are connected with or result from the negligence or willful misconduct of its own personnel during the course of the conduct of Professional Services at Customer's location.

17.4 If a notice of commencement or threatened commencement of a claim or cause of action is received by a party entitled to indemnification under this Section 17, such party (the "Indemnified Party") shall provide the party that is obligated to provide indemnification under this section (the "Indemnifying Party") with: (i) prompt written notice of each claim received; (ii) control over the defense and settlement of the claim; and (iii) full information and reasonable assistance to settle or defend the claim. Notwithstanding the foregoing, the Indemnifying Party shall not settle the claim without the Indemnified Party's prior written approval if such settlement requires the Indemnified Party to take any action, refrain from taking any action or admit any liability. The Indemnified Party shall be entitled to participate in the defense of any such claim at its own expense.

17.5 THE PROVISIONS OF SECTIONS 17.1 AND 17.2 ABOVE STATE JHA'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR JHA'S INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

18. LIMITATION OF LIABILITY

18.1 Neither party shall be liable to the other party or to any other person, firm or company, for failure to fulfill its obligations hereunder due to the occurrence of an event beyond its reasonable control, including but not limited to acts of God, public disaster, fire, flood, riot, war, terrorism, labor strikes/disputes involving its suppliers, judicial orders/decrees, government laws/regulations, or interruptions of communications, transportation or electricity.

18.2 Any liability of JHA for any loss, damage, or cost hereunder shall be limited to actual direct damages incurred by Customer, but in no event shall the aggregate of liability exceed the total amount of License fees actually paid by Customer to JHA under this Agreement with regard to the Software products involved or affected, nor shall any amount of the liability include any indirect, incidental, consequential, punitive or special damages incurred by Customer. The foregoing limitation on the amount of recoverable actual direct damages shall not apply to JHA's indemnification liability under Section 17 (Indemnification) above or to any action or omission of action which constitutes the gross negligence or willful misconduct of JHA.

18.3 Customer shall be solely responsible for any loss or damage caused to the data of Customer or its customers during the transmission of the data to and from JHA's location, provided that the loss or damage to the transported data is not caused by JHA's negligence in packaging the data for shipment. At its own expense, Customer shall be responsible for contracting the services of a third party common carrier of its choice to perform these delivery services for Customer. JHA's sole responsibility in handling the data shall be to reasonably package the data for return transmission in accordance with industry standards and deliver the packaged data to Customer's selected carrier for its delivery to Customer. If Customer should fail to secure the services of a common carrier to perform these delivery services, JHA may secure the services of a reputable common carrier to perform these delivery services and pay the common carrier for the delivery charges and shipment insurance fees associated with its delivery services, which shall be reimbursed by Customer to JHA.

19. TERMINATION

19.1 The term of this Agreement shall commence on the date of this Agreement shown on the signature page and continue in effect for the term specified in Section 4.2 above unless terminated earlier as provided below.

19.2 Either party may terminate this Agreement for cause by written notice to the other party, upon the occurrence of a breach of this Agreement which has not been cured by the other party following thirty (30) days prior written notice of such breach. If the breach is due to Customer's failure to pay a correct and valid invoice when due without legitimate dispute, this cure period shall be reduced to ten (10) days following receipt of notice of the delinquency from JHA.

19.3 JHA may terminate this Agreement for cause in the event that Customer undergoes voluntary or involuntary bankruptcy, reorganization, receivership, conservatorship, custodianship, assignment for benefit of creditors, seizure of assets, liquidation, dissolution, cessation of business, or action by government authorities which would divest control from the present ownership of Customer or allow this Agreement or individual Licenses to be assigned to other parties without JHA's written consent.

19.4 In the event JHA ceases to do business, the successor to JHA's assets will be bound by this Agreement the same as JHA, and Customer may continue to use the Software under all the terms and conditions of this Agreement. If there is no successor to JHA's assets, then the Software shall become the non-exclusive proprietary product of Customer subject to the confidentiality restrictions described in Section 7 (Trade Secrets) above. If JHA has ceased to do business, Customer may reveal Software and/or materials to third parties for the sole purpose of maintenance and customization of the Software for the sole use of Customer, provided that the third parties have agreed to be bound by similar written confidentiality restrictions with respect to the Software.

19.5 In the event of JHA's termination of this Agreement for cause, Customer shall immediately cease using all copies of the Software in its possession, uninstall the Software from all locations, and return the Software copies to JHA or destroy the Software copies and certify this

destruction to JHA in writing by an officer or senior manager of Customer.

20. SOURCE CODE ESCROW

20.1 For all JHA Software which is delivered to Customer in an object code format, JHA shall maintain current versions of the source code of the JHA Software ("Source Code") in a third party source code escrow arrangement with an independent escrow agent ("Escrow Agent"). JHA shall enter into and maintain a written escrow agreement with the Escrow Agent which will provide for the Escrow Agent to release to Customer the Source Code for the JHA Software in the event that JHA ceases to do business, provided that Customer has a then-current active and paid-up Maintenance contract for the Software affected with JHA.

20.2 With respect to Third Party Software, JHA will provide reasonable assistance to Customer for establishing Customer's participation in any source code escrow arrangement offered by third party Software owners for their third party Software products. All contractual participation in the third party Software source code escrow arrangement shall be directly transacted between Customer and the third party Software owner and its source code escrow agent.

21. AUDIT

Not more often than once each calendar year, JHA or its third party auditor may at JHA's expense conduct an audit at Customer's site upon at least thirty (30) days prior written notice to verify that Customer's use of the Software conforms to the terms of this Agreement. If an audit uncovers wrongful use or copying of the Software by Customer, Customer shall pay to JHA the then-current License and Maintenance fees for the additional license usage. Further, if Customer's wrongful copying or usage of the Software exceeds 110% of its licensed Software installation, Customer shall reimburse JHA for its reasonable costs of conducting the audit.

22. INSURANCE

At its own expense, JHA shall secure and maintain throughout the term of this Agreement insurance policies provided by insurance carriers with an A.M. Best Financial Strength Rating of at least "A", covering JHA's activities under this Agreement and reflecting the following minimum policy coverages and limits:

- (a) Commercial General Liability: \$2,000,000 per occurrence
- (b) Automobile Liability: \$1,000,000 combined single limit
- (c) Excess Liability: \$10,000,000 per occurrence
- (d) Workers Compensation: Statutory limits; no coverage in monopolistic states—in those states, Employers Liability coverage applies with a limit of \$500,000
- (e) Employee Dishonesty: \$10,000,000

Upon request, JHA will provide Customer with a current certificate of liability insurance evidencing these policy coverages and limits and showing Customer as an additional insured.

23. GENERAL PROVISIONS

23.1 The parties are and shall remain independent contractors and shall have no legal right or authority to make any binding commitments on behalf of the other party. Each party shall be solely responsible for the provision of insurance, workers compensation and other benefits to its own employees.

23.2 Any notice under this Agreement shall be in writing and shall be deemed delivered when actually received, or five days after it is sent by United States Postal Service certified mail, return receipt requested, or by overnight express mail, with proof of delivery retained, when addressed to the other party at its above address, which may be changed by written notice. A copy of any written notice of breach or termination of this Agreement given by Customer to JHA shall be delivered to the attention of JHA's Legal Department at the same address listed above.

23.3 No action arising out of this Agreement may be brought by Customer or JHA more than two (2) years after the cause of action has accrued and the injured party has actual knowledge of the accrual. The prevailing party in any litigation conducted in relation to this Agreement

shall be entitled to recover its reasonable attorneys fees from the other party.

23.4 This Agreement supersedes all prior license or use agreements for the Software, if any, and contains the entire agreement between the parties with respect to the transactions contained herein. This Agreement shall be modified or altered only by a written instrument signed by authorized representatives of both parties. The attached Exhibits and any addenda executed under this Agreement are part of this Agreement.

23.5 The headings of each Section in this Agreement are provided only for convenience and shall not be deemed controlling.

23.6 This Agreement shall be binding upon and inure to the benefit of the parties and their respective assigns and successors.

23.7 Except as provided below, this Agreement shall not be transferable or assignable by Customer without the prior written consent by JHA, which shall not be unreasonably withheld. Customer may assign its rights and obligations under this Agreement in their entirety to a successor entity which acquires controlling ownership interest in Customer, continues to operate the business of Customer, and is contractually bound to perform all of the obligations and liabilities of Customer under this Agreement. Customer or the successor entity shall provide written notice of the assignment to JHA within thirty (30) days following the effective date of the assignment. If the assignment permits the successor entity to exercise an expanded use of the Software beyond the scope of the Software license acquired by Customer from JHA under this Agreement, then the successor entity shall pay to JHA any additional Software license and Maintenance fees due for such expanded use, as an express pre-condition to the successor entity's use of the Software in that manner.

23.8 This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri, without reference to its conflict of laws provisions, and applicable U.S. federal laws and regulations. The application of the United Nations Convention on Contracts in the International Sale of Goods is expressly excluded from this Agreement.

23.9 Throughout the term of this Agreement and for a period of one (1) year thereafter, neither party shall proactively and directly solicit or hire for employment any of the personnel of the other party who have been directly involved in a Professional Services project conducted under this Agreement, without the prior written consent of the other party. The foregoing restriction shall not apply to the employment of the other party's personnel which occurs solely through general employment search vehicles (e.g. Monster.com) or employment notices or solicitations published publicly (e.g. through corporate website postings or employment advertisements).

23.10 The provisions of Sections 5, 7, 9, 10, 11, 17, 18, 19, 20, 21 and 23 shall survive the expiration or termination of this Agreement.

23.11 If any of the provisions of this Agreement are invalid under any applicable statute or rule of law, they are, to that extent, deemed omitted. Such omission does not change the intent or binding nature of any or all of the rest of this Agreement. A party's failure to enforce any right or duty under this Agreement against the other party in any instance shall not be deemed to constitute a waiver of that party's right to enforce such right or duty against the other party in the future.

23.12 Any purchase orders, order acknowledgements or other form documents issued by either party to document transactions completed under this Agreement shall be utilized for administrative purposes only. No terms and conditions contained in any such form documents shall supplement or modify the terms and conditions of this Agreement and exhibits, addenda, Statements of Work or services orders executed between the parties under this Agreement.

23.13 This Agreement and individual Exhibits, addenda, Statements of Work and services order documents may be executed by the parties by applying manual or electronic signatures of its authorized representatives to original documents or facsimile, scanned or other electronic copies of original documents and transmitted by physical or electronic means for this purpose. For legal evidentiary purposes, a facsimile, scanned or other electronic copy of this Agreement bearing the

signatures of the authorized representatives of both parties shall be accepted as an equivalent to a signed original copy of the document.

23.14 The provisions of this Section shall apply only in the sole event that Customer is not headquartered in the United States of America or in the event that any JHA Software, Maintenance or Professional Services are delivered to Customer outside of the United States. In that event the parties agree that all courts of the State of Missouri, USA, shall have jurisdiction over the subject matter and over the parties, and venue in any suit, claim, proceeding, dispute or disagreement arising from or relating in any way to this Agreement. Customer hereby agrees that by entering into this Agreement it specifically consents to the jurisdiction and venue of all courts of the State of Missouri, USA, hereby waives notice and service of process, and further agrees that valid service of process in any Missouri court proceeding is confirmed seven (7) days after notice thereof is sent to Customer at its address contained herein via United States Postal Service Registered Mail. Customer also specifically agrees that any final judgment entered against Customer may be registered and enforced against Customer in any other foreign country or jurisdiction as though such final judgment was rendered by the courts or other legal process of that country or jurisdiction.

< End of Standard Terms and Conditions >

EXHIBIT A

PRODUCTS AND SERVICES SCHEDULE

ProfitStars® RemitPlus® Software

Customer: City of Lodi, 221 W. Pine Street, Lodi, CA 95240

1. Products and Services:

- 1.1 **Software License:** The following Software components are licensed by JHA to Customer for installation and internal use in Customer's production environment on Customer's computer system:

ProfitStars® RemitPlus Software—Annual License Fee Option

Description		# of Copies	Base Software License Fee	Software Installation Fee	Annual License Fee
JHA Software:					
RemitPlus® Software		1	\$9,750.00	\$1,800.00	\$1,462.50
Concurrent Seat License:	5 concurrent seats				
Initial Item Processing Volume Tier License:	Up to 200,000 Items processed per Annual License Fee term				
MultiUser		2	\$2,000.00	\$0.00	\$300.00
Electronic Deposit		1	\$2,000.00	\$0.00	\$300.00
ScanForm (up to 190 DPM)		1	\$250.00	\$0.00	\$37.50
Third Party Software:					
Parascript CheckPlus® Software (CAR/LAR) – Server Version		1	\$1,375.00	N/A	\$206.25
Volume Tier License:	Up to 500,000 Counts processed per Year				
Total Net Fees Due:			\$15,375.00	\$1,800.00	\$2,306.25

- 1.2 **Third Party Services:** The following Third Party Services are licensed by JHA to Customer for installation and internal use in Customer's production environment on Customer's computer system:

ProfitStars RemitPlus: Orbograph Convene Third Party Services

Description of Services	Install/One-Time Fee	Fee per 1,000 Key Strokes
Third Party Services:		
Orbograph Convene Checks	N/A	\$1.80
Orbograph Convene Forms	N/A	\$1.80

1.3 Annual License Fee Option:

(a) The Annual License Fee option allows Customer to acquire a License for the Software products listed in this Schedule on an annually renewable term basis. The Annual License Fee shown above includes Customer's licensed use of the Software in accordance with the licensing terms described in this Schedule and JHA's provision of standard Maintenance for the Software during the annual license term. All JHA Software and Third Party Software products shown in the table above are licensed by JHA to Customer on an Annual License Fee term basis, unless a different license term period is specified above. The initial Annual License Fee term will commence upon the following date:

- (1) If Customer has contracted for JHA to perform the installation of the Software at Customer's site, then the Annual License Fee term will commence on the Implementation Date.
- (2) If Customer has not contracted for JHA to perform the installation of the Software at Customer's site, then the Annual License Fee term will commence on the date that JHA's delivers the Software to Customer, or the date that Customer downloads the Software programs from JHA's FTP site, whichever is applicable.

(b) After completion of the initial Annual License Fee term, JHA reserves the right to prorate the Annual License Fee term so that it will commence on each July 1 thereafter. Approximately sixty (60) days in advance of the expiration of the current Annual License Fee term, JHA will issue an invoice to Customer for the next following Annual License Fee term, which will be due and

payable by Customer no later than the first day of the next following Annual License Fee term. If Customer fails or declines to pay this renewal Annual License Fee term invoice received in a timely manner from JHA, then Customer's license of the Software shall automatically terminate without any notice or action by either party. In addition, either party may elect not to renew the Annual License Term applicable to any of the Software by giving the following advance written notice of non-renewal to the other party:

- (1) Notice of non-renewal by Customer to JHA: Thirty (30) days in advance of the expiration date of the current Annual License Fee term.
- (2) Notice of non-renewal by JHA to Customer: One hundred eighty (180) days in advance of the expiration date of the current Annual License Fee term, provided however that JHA shall not exercise this right of non-renewal prior to the occurrence of at least three (3) full Annual License Fee terms for the Software affected.
- (c) After completion of the initial Annual License Fee term, JHA reserves the right to increase the Annual License Fee applicable to the Software products and licenses covered by this Schedule with respect to any renewal Annual License Fee term by not more than ten percent (10%) over the then-current Annual License Fee. JHA shall deliver to Customer advance written notice of any such fee increase not less than ninety (90) days prior to the expiration of the then then-current Annual License Fee term.

1.4 RemitPlus Software License:

(a) Licensing and Pricing Metrics: JHA RemitPlus Software is licensed on the basis of two licensing metrics (the number of concurrent seats authorized to access and use the RemitPlus Software, and Item processing volume tier) and priced on the basis of the base Software license fee ("Base License Fee" or "BLF") shown above and a recurring renewable Annual License Fee shown above, for the cumulative volume of Items (defined below) which are processed during each Annual License Fee term of this License.

- (1) Base License Tier: The Base License Fee is calculated initially on the basis of the maximum number of concurrent seats on workstation computers owned or leased by of Customer and its Affiliates that will be authorized to access and use the RemitPlus Software in their operations, which is determined as of the date of this License purchase. The license size of this maximum number of concurrent seats is identified in Section 1.1 above. For the purpose of this licensing calculation, a "seat" is defined as a single workstation computer on which the client version of the RemitPlus Software has been installed. The licensed number of concurrent seats represents the maximum number of seats that can simultaneously access and use the Remitplus Software.
- (2) Item Processing Volume Tier: If during the course of any Annual License Fee term Customer's use of the RemitPlus Software reaches the maximum limit of the Item processing volume tier license previously acquired by Customer, Customer will be required to purchase an Item processing volume tier license upgrade for the Remit Plus Software in order to enable the Remit Plus Software to process a higher volume tier of Items covering the remainder of the then-current Annual License Fee period and each renewal Annual License Fee term thereafter. The Remit Plus Software License upgrade fee payable by Customer in this instance will be priced at the then-current standard JHA Base Software license fee and Annual License Fee applicable to the higher tier volume of Items to be processed, as selected by Customer, against which will be applied a full credit of the Base Software License fee and the then-current Annual License Fee already paid by Customer, which amount will be prorated to cover the remaining period of the then-current Annual License Fee term.
- (b) The term "Item" used in this licensing metric is defined as a single payment transaction processed by use of the RemitPlus Software, including one or more checks and one or more accompanying payment documents ("coupons"), such as payment stubs, deposit tickets and remittance coupons. The Item count is determined in accordance with the following principles:
 - (1) The primary determinant of the Item count in a single payment transaction is the number of checks being processed. One check equals one Item count, regardless of the number of coupons processed with the check. For example, processing one check with six coupons results in an Item count of one; processing six checks with one coupon results in an Item count of six.
 - (2) If only coupons and no checks are being processed as part of the payment transaction, then the determinant of the Item count in the payment transaction is the number of coupons being processed. For example, if no checks and six coupons are processed in a single payment transaction, the Item count equals six.
- (c) Customer's failure to pay a Base License Fee upgrade fee or an Item Processing volume tier License upgrade fee when due will result in automatic termination of Customer's License of the Software.
- (d) Projects: The RemitPlus Software license shown above includes the right for Customer to deploy up to five (5) Projects using the RemitPlus Software. Deployment of additional Projects by Customer will require the purchase of a separate license upgrade of the Remitplus Software.

1.5 Parascript Software License: If Customer has licensed the Parascript Software product(s) identified above as Third Party Software, the following terms and conditions apply to that License:

- (a) The Parascript Software (for which JHA is an authorized reseller) is owned by Parascript, LLC and sublicensed by JHA to Customer for Customer's use solely in conjunction with the JHA RemitPlus Software. The Parascript Software is licensed on the basis of the following licensing metrics:
 - (1) The hardware platform upon which the Parascript Software will be installed and used (e.g. on a desktop scanner or on a server computer);

- (2) The number of copies of the Parascript Software to be installed by Customer on the designated hardware platform for use with the RemitPlus Software; and
- (3) The number of Counts processed by Customer using the Parascript Software during per each Year, calculated in accordance with the formula set forth in clauses (b) and (c) below.
- (b) The term "Count" used in this licensing metric is defined and tracked by Parascript LLC and means a single instance in which the Parascript Software is used to read a character, field or document and results in a billable unit. A billable unit may also be a preset quantity of "Counts" (e.g. a volume tier). Parascript LLC has assigned Count values for individual field types which may be read on a document of a check or coupon being processed. Parascript LLC's schedule of Count values will be communicated to Customer on JHA's customer website; by publication in the Documentation that applies to the Parascript Software; or provided in a written document if requested by Customer. The term "Year" used in this licensing metric is defined as a 12 calendar month, which period is set by Parascript LLC in its license key for the Parascript Software.
- (c) Each copy of the Parascript Software is licensed for Customer's use solely with the RemitPlus Software. Customer's installation and use of the Parascript Software with any other JHA or non-JHA Software product will require Customer's purchase of a separate Parascript Software license for such use.

1.6 Orbograph Convene Services: If Customer utilizes the Orbograph Convene Services identified in Section 1.2 above, the following terms and conditions apply to the Orbograph Convene Services:

- (a) The Orbograph Convene Services (for which JHA is an authorized reseller) is owned by Orbograph Ltd. ("Orbograph") and its licensors and is provided by Orbograph to Customer for Customer's use solely in its internal business operations and in conjunction with the Customer's licensed RemitPlus Software.
- (b) The fees shown for the Orbograph Convene Services are calculated and billed by JHA to Customer on a calendar monthly basis, based on the number of key strokes actually processed by Customer using the Orbograph Convene Services.
- (c) The following supplemental provisions are included in this Agreement or Addendum between JHA and Customer with regard specifically and solely to the Orbograph Convene Services:
 - (1) All intellectual property rights to the Orbograph Convene Services are owned exclusively by Orbograph and its licensors. Customer is granted the non-exclusive right to use the Orbograph Convene Services solely in conjunction with the licensed RemitPlus Software. Any other intended use of the Orbograph Convene Services requires the prior written approval of JHA or Orbograph and may be subject to the payment of additional fees for such additional use of the Orbograph Convene Services.
 - (2) Orbograph has warranted to JHA and JHA warrants to Customer that the Orbograph Convene Services will conform in all material respects to the written descriptions and specifications published by Orbograph for the Orbograph Convene Services. Orbograph does not warrant that the operation of the Orbograph Convene Services will be error-free or will meet Customer's requirements. JHA's and Orbograph's sole responsibility and Customer's sole remedy under this warranty will be for Orbograph to repair or replace any Orbograph Convene Services which do not conform to the foregoing warranty and are confirmed by Orbograph to be defective. If Orbograph does not repair or replace the defective Orbograph Convene Services, Customer may terminate its use of the Orbograph Convene Services. JHA does not make or extend any other separate warranties, guarantees, indemnities or liabilities to Customer with respect to the Orbograph Convene Services. EXCEPT FOR THIS EXPRESS LIMITED WARRANTY, NEITHER JHA NOR ORBOGRAPH MAKES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY ORBOGRAPH CONVENE SERVICES, AND JHA AND ORBOGRAPH EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED OR ARISING BY STATUTE, CUSTOM OR TRADE USAGE, ~~INCLUDING~~ BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
 - (3) IN NO EVENT SHALL EITHER JHA OR ORBOGRAPH BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, INTERRUPTION OF BUSINESS, LOST PROFITS, OR LOST DATA) OR ANY INDIRECT, SPECIAL, PUNITIVE, OR INCIDENTAL DAMAGES OF ANY KIND, EVEN IF JHA OR ORBOGRAPH HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL JHA'S OR ORBOGRAPH'S AGGREGATE LIABILITY IN CONNECTION WITH THE OROGRAPH CONVENE SERVICES FOR ALL CLAIMS (WHETHER IN CONTRACT, TORT, STATUTE OR OTHERWISE) EXCEED THE AMOUNTS PAID BY CUSTOMER TO JHA FOR THE ORBOGRAPH CONVENE SERVICES DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF SUCH CLAIM.
 - (4) For the limited purpose of enforcing or protecting its rights to the Orbograph Convene Services directly against Customer, Orbograph and its licensors shall be an intended third party beneficiary of this Agreement or Addendum between JHA and Customer. Customer acknowledges that Orbograph and its licensors shall have no responsibility or liability with regard to JHA's obligations to Customer under this Agreement or Addendum.

1.7 Server-Eased Software Licenses: Unless otherwise specifically indicated in the table above or this Exhibit A, all JHA Software and Third Party Software products listed in the table above are for installation and use of the JHA Software and Third Party Software products on a server computer owned or controlled by Customer.

2. Software Deliverables: JHA will furnish to Customer one copy of the object code software programs of the JHA and Third Party Software product(s) listed above which will be installed on Customer's IBM-compatible computer, and one set of the standard software user documentation for the Software product(s). The installation location of the Software shall be at the address for Customer first shown above, unless a different address is indicated in this Exhibit.

Product Group	Hours of Operation
Remit Plus Software	8:00 am through 5:00pm, Central US time zone

All times listed are for Monday through Friday, excluding standard US banking holidays published by the US Federal Reserve System.

5.2 **Third Party Software Products:** In consideration of Customer's payment of the Annual License Fee for Third Party Software, JHA will provide the following standard Maintenance for the Third Party Software:

- (a) The JHA customer support organization will receive and process Error incident reports submitted by Customer with regard to the operation of the Third Party Software, during the same hours of operation specified above for JHA Software. JHA will perform a basic level of Error troubleshooting and resolution activities with respect to Errors determined by JHA to be caused by the Third Party Software and escalate the Error incident to the owner of the Third Party Software for handling and resolution if the Error requires access to the source code of the Third Party Software or advanced technical expertise with the Third Party Software programs which is beyond JHA's technical competency to resolve.
- (b) JHA will provide to Customer periodic standard Update releases of the Third Party Software issued by the owner of the Third Party Software to JHA, which have been tested and certified to interoperate with the RemitPlus Software.

6. **Payment Term:** Customer shall pay the fees shown above to JHA, together with reimbursement of JHA's reasonable, actual out-of-pocket travel expenses incurred by its Professional Services personnel traveling to and from Customer's location to deliver the Professional Services specified in this Exhibit. These fees shall be due to JHA on the following schedule and paid by Customer within thirty (30) days following receipt of JHA's invoice:

Transaction	Payment Due by Customer
Base Software License Fees and Initial Annual License Fees	100% on the Implementation Date
Professional Services Fees	100% on the Implementation Date

7. **Supplemental Terms and Conditions:** The following terms and conditions apply to the Software listed above:

7.1 **Remit Plus Software Products:**

- (a) The Software programs will be delivered by JHA to Customer in object code format only.
- (b) The initial License copy of the Software shall be installed and used by Customer solely in its production environment. In addition to this primary production License copy of the Software acquired by Customer, Customer may acquire from JHA additional License copies of the same Software product or product component for Customer's internal use in conjunction with its production environment License copy which the Customer will use (1) as additional production environment License copies, and/or (2) solely for non-production purposes, such as development, test or disaster recovery.
- (c) The Software requires the use of third party software, such as client and server operating systems, relational database systems, communications/networking systems, and internet browsers in order to be fully functional. In

addition, the Software requires appropriate computer hardware with an adequate amount of memory as indicated in JHA's published specifications for the Software. Customer is responsible for obtaining and maintaining such hardware and third party software for use with the Software. Any purchase of the hardware and licensing of the third party software through JHA shall be documented in a separate hardware sales agreement executed between JHA and Customer.

< End of Exhibit A >

REMOTE DEPOSIT SERVICES AGREEMENT

This Remote Deposit Services Agreement ("Agreement") is entered into between Farmers & Merchants Bank of Central California ("Bank") and City of Lodi ("Customer"). This Agreement is intended to work in concert with the Customer Agreement & Schedule of Charges Effective May 15, 2009 (as amended) and the Letter from Bank to City of Lodi dated June 1, 2011 but the terms of those agreements are not incorporated herein. In the event of conflicts between the terms of this Agreement and the terms of the Customer Agreement & Schedule of Charges Effective May 15, 2009 (as amended) and the Letter from Bank to City of Lodi dated June 1, 2011, the terms of this Agreement shall control.

1. **Background.** Bank offers the Product and Services for the electronic clearing of items, which would enable Customer to transmit paper items converted to electronic items to Bank for processing and deposit into the account of Customer. Customer desires to use the Product and Services to clear checks electronically.
2. **Definitions.** Capitalized terms defined in this Agreement shall have the meanings indicated in **this** Agreement (including in Exhibit A).
3. **Services.** Bank will provide to Customer the Product and Services described in this Agreement to enable Customer to transmit Items to Bank to be cleared as Substitute Checks or Image Exchange Items. Bank and Customer will comply with the terms and provisions of **this** Agreement with respect to the use of the Product and the performance of the Services. If Customer is approved by Bank to transmit Items to Bank to be cleared as ACH entries, a new or separate ACH agreement ("ACH Agreement") will be required to be executed by Customer and Bank. In that event, unless otherwise provided, all ACH entry transactions will be governed by the ACH Agreement and all Substitute Check and Image Exchange Item transactions will be governed by this Agreement.
4. **Implementation.** Customer will capture digitized images of Items using equipment provided by or through Bank or other equipment acceptable to Bank, and will ensure that the output files are compatible with the Product. Customer may also be required to use such Software as Bank may reasonably require in connection with the transmission of output files to Bank. Any Software deemed necessary by Bank shall be maintained by Customer, except as the parties may otherwise agree in writing, and must meet technical specifications acceptable to Bank. Customer shall otherwise transmit its output files as provided in the Documentation.
5. **Customer Responsibilities.** In connection with the Product and the Services, Customer shall comply with the following:

5.1. Customer's General Responsibilities.

5.1.1. Customer shall maintain one or more bank accounts at Bank for the receipt of deposits of Items.

5.1.2. Customer shall be responsible for training its own employees in the use of the Product and Services.

5.1.3. Customer only will submit Items for processing to Bank that meet the definition of "Item" in Exhibit A and will ensure that the Items scanned meet the ANSI X9.37 standards for image quality required by Regulation CC, or other standards established by Bank or applicable law. Bank's processing of any Items that do not meet the definition on Exhibit A ("on-qualifying Items") shall not constitute a waiver by Bank or obligate it to process such Non-qualifying Items in the future. Bank may discontinue processing of Non-qualifying Items at any time, without cause or prior notice.

5.1.4. Bank reserves the right, upon written notice from Bank to Customer, to prohibit Customer from attempting to scan and transmit to Bank any Item which is drawn on a deposit account of Customer at Bank or any other financial institution, or a deposit account of any business entity of which Customer is a principal, officer or authorized signer. Customer agrees to comply with any such written notification from Bank.

5.1.5. Customer will not attempt to scan and transmit to Bank any previously truncated and reconverted Substitute Check. Any previously truncated and reconverted Substituted Check must be physically deposited with the Bank.

5.1.6. Customer will (i) ensure that Items are restrictively endorsed or otherwise processed to permit only financial institutions to acquire rights of a holder in due course in the collection process of Items, (ii) handle, process, maintain and destroy Original Checks and Electronic Items as set forth in the Documentation, and (iii) ensure that no financial institution (depository, collecting or payor), drawee, drawer or endorser receives presentment or return of, or otherwise is charged for an Item or its corresponding Electronic Item more than once.

5.1.7. Customer will use the Product and Services, including the entering, processing and transmittal of Items, in accordance with the Documentation.

5.1.8. Customer will retain each Item in accordance with the Documentation. If not directed otherwise and except as provided in paragraph 5.1.6, Customers will store Items in a safe and secure environment for such for a minimum of 15 days and not to exceed 90 days after such Item has been digitized and processed. Customer will promptly (but in any event within 5 business days) provide any retained Item (or, if the Item is no longer in existence, a sufficient copy of the front and back of the Item) to Bank as requested to aid in the clearing and collection process to resolve claims by third parties with respect to any Check or as Bank otherwise deems necessary. Customer will use a commercially reasonable method to destroy Items after Customer's retention period has expired. Bank reserves the right to approve or reject any method used by Customer for the destruction of Items and otherwise reserves the right to determine the method of destruction to be used by Customer.

5.1.9. Customer understands and agrees that an Item or its corresponding Electronic Item that is not paid by a Payor Financial Institution, or is otherwise returned for any reason, will be returned to Customer and Customer's account charged for the amount of the Item or corresponding Electronic Item plus any associated fee as disclosed in Bank's schedule of fees. Bank's right to charge the account of Customer will apply without regard to whether the Item or corresponding Electronic Item is timely returned to Bank or whether there is any other claim or defense that the Item or Electronic Item has been improperly returned to Bank.

5.1.10. Customer shall maintain fully qualified, properly trained and experienced administrative staff and employees sufficient to perform its obligations under this Agreement.

5.2. Remote Capture Service.

5.2.1. Customer's Account will receive credit through the deposit of Items that Customer provides to Bank.

5.2.2. Customer will create images of Items at Customer's location by use of scanning hardware and Software approved or provided by Bank. Customer will enter all amounts and any other required information correctly.

5.2.3. The electronic images of Items will be transmitted by Customer to Bank, or Bank's authorized processor, over the internet through a web-based interface. It is Customer's obligation to ensure that Customer has a valid Internet connection to use the Service and is using the latest version of Internet Explorer or other Internet browser accepted or required by Bank.

5.2.4. Bank will maintain the appropriate Account for Customer to receive credit and provide other specific information required by Bank related to the Service. All deposits are accepted subject to Bank's verification and final inspection and may be rejected by Bank in Bank's sole discretion. All deposits are subject to the terms of the Deposit Account Agreement.

6. Compliance with Law. Customer shall comply with all laws, rules, and regulations applicable to Customer, to the business and operation of Customer, and to the Products and Services, including, without limitation, Regulation CC, the Uniform Commercial Code and any rules established by an image exchange network through which Image Exchange Items are processed pursuant to this Agreement. Customer shall have the responsibility to fulfill any compliance requirement or obligation that Bank and/or Customer may have with respect to the Service under all applicable U.S. federal and state laws, regulations, rulings,

including sanction laws administered by the Office of Foreign Assets Control, and other requirements relating to anti-money laundering, including but not limited to, the federal Bank Secrecy Act, the USA PATRIOT Act and any regulations of the U.S. Treasury Department to implement such Acts, as amended from time to time.

7. Communications Security Software.

7.1. Customer agrees to use the communications security Software as Bank may reasonably require in connection with the transmission of output files to Bank. Bank may, from time to time, require and change the Software required for this purpose, provided such change does not result in any additional license or maintenance fees payable by Customer, upon 30 days advance notice to Customer.

7.2. Initially, Bank will provide to Customer a capture device for Customer to scan Items for conversion to digitized images and may also provide to Customer, at any time after execution of this Agreement, Software to be used in connection with the Services.

7.2.1. Customer will implement and use the capture device and any required Software, as set forth in the Documentation and any applicable materials relating to the Documentation to transmit output files to Bank.

7.2.2. Customer acknowledges that (i) its license to any Software required for the Service is directly from the Software provider, pursuant to the license agreement that appears when any such Software is electronically accessed by Customer, (ii) Bank may provide certain "first level" support to Customer with respect to the Software, but that Bank will have no responsibility, for maintenance, support, infringement protection, or otherwise, to Customer with respect to the Software, and (iii) Customer will look strictly to the Software provider, or its successors, with respect to any issues concerning the Software that cannot be satisfactorily resolved with Bank's assistance.

7.2.3. Customer will use any required Software solely for the purpose of transmitting output files to Bank consistent with this Agreement and not for communications with any other party. Customer will not allow access to the Software or the use of the Product by any person other than Customer, and will not process Items except Items arising from a transaction or obligation between Customer and its direct payor. Customer will not process any third-party Items. Customer represents, agrees and warrants to Bank that (except as otherwise specifically disclosed in writing to Bank) Customer is not now engaged, and will not during the term of this Agreement engage, in any business that would result in Customer being or becoming a "money service business" as defined in the Federal Bank Secrecy Act and its implementing regulations.

7.2.4. As set forth in Paragraph 13.2 below, Customer will promptly return the capture device, all copies of any required Software, and the Documentation, including materials related to the Documentation, to Bank upon termination of the Agreement.

8. Bank Rights and Responsibilities.

8.1. For all Items processed by Customer pursuant to this Agreement, either (i) digitized images will be converted to Substitute Checks and presented for payment to established Endpoints, or (ii) Image Exchange Items will be presented for payment through image exchange networks. Bank may in its sole discretion determine the manner of processing. All such processing and presentment shall be done in accordance with timeframes and deadlines set forth in the Documentation and as otherwise established by the Bank from time to time.

8.2. Unless otherwise agreed by Customer and Bank, Bank will process any returned Items in accordance with applicable law and the Customer Agreement & Schedule of Charges Effective May 15, 2009 (as amended) and the Letter from Bank to City of Lodi dated June 1, 2011.

8.3. Subject to Paragraph **8.5** below, availability of credit from Items processed under this Agreement will be subject to the availability schedule of Bank, which may be amended without notice.

8.4. Bank may at its sole option, at any time and from time to time, refuse to process Items or any corresponding Electronic Item. However, Bank will manually review refused items for approval unless review shows the items cannot be approved. Bank may from time to time establish prospective exposure limitations and assign them to Customer upon immediate notification to Customer.

8.5. In addition to any other rights Bank may have as regards the accounts of Customer, Bank may hold and use funds in any account following termination of this Agreement for such time as Bank reasonably determines that any Item or Electronic Item processed by Bank prior to termination may be returned, charged back or otherwise a cause for any loss, liability, cost, exposure or other action for which Bank may be responsible. Without limitation, Customer recognizes that under the Rules, the UCC, Regulation CC and the rules of any image exchange network Bank's representations and warranties as regards Electronic Items and Substitute Checks may expose Bank to claims for several years following processing of the Electronic Items or Substitute Check.

8.6. Bank shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission, or communication facilities, equipment failure, war, emergency conditions or other circumstances beyond Bank's control. In the event of any of the foregoing failure or delays, Customer acknowledges that it may instead deposit directly with Bank any Original Items for processing and presentment, provided such Original Items have not been previously imaged and processed in connection with the Product and Services. In addition, Bank shall be excused from failing to transmit or delay in transmitting an Entry if such transmittal would result in Bank's having exceeded any limitation upon its intraday net funds position established pursuant to Federal Reserve guidelines or if Bank's otherwise violating any provision of any risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority.

8.7. Customer shall have a normal security reserve of \$50,000.00 for purposes of the offset rights set forth in this paragraph ('Normal Security Reserve'). If Customer's accounts fall below the Normal Security Reserve, Customer shall immediately fund the reserve amount with good funds. Bank may withhold and use any amounts due to Customer to maintain the Normal Security Reserve amounts. To secure all obligations of Customer to Bank arising from this Agreement, Customer grants to Bank a security interest in all accounts of Customer at Bank, all funds in those accounts, any reserve accounts or funds therein, all Items and Entries (including any funds in process of settlement), whether now or hereafter established by or for the benefit of Customer at Bank, and all proceeds of the foregoing. Bank's security interest will survive after termination of this Agreement. This security interest shall be limited to the value of the Normal Security Reserve and is supplemental to and not in lieu of the security interest granted by Customer to Bank under any other agreement. In the event a single item is processed in excess of the Normal Security Reserve, Bank's security interest shall be temporarily increased to the full amount of that single item until 60 days after that single item has cleared, at which time the security interest shall revert to the Normal Security Reserve amount.

8.8 Bank has the right, upon reasonable notice, to audit, review and require specific controls in connection with Customer's policies, practices, procedures, and compliance with this Agreement for the Product and Service, including but not limited to, on-site inspection of any Customer facility, such as an office or data center, as it deems necessary or desirable, arising out of Customer's use of the Product and Services, Customer's management, operational controls, processes, risk management practices, staffing, training, support and information technology, infrastructure and other specific risks and practices of Customer, such as Services Customer may provide to third parties ("users"). Customer will also promptly provide additional information, as reasonably requested by Bank, relevant to the Product and the Service, including information about users.

As provided in Section 16, BANK MAKES NO WARRANTY OR REPRESENTATION, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, PRODUCT, REVIEWS OR REQUIREMENTS UNDER THIS SECTION 8."

9. Processing Times.

9.1. The Service is available for use only on business days during the times set forth in the Documentation, except during maintenance periods, or such other hours as established by Bank from time to time. Transmissions processed after these hours on a business day, or on any day that is not a business day, are treated as occurring on the next business day.

9.2. Items will be processed and ready for presentment by Bank after Bank receives all good digitized images and associated data for any given transmission from Customer. Bank will use commercially reasonable efforts to present Items or corresponding Electronic Item to the applicable Endpoint within a reasonable period of time following such receipt.

9.3. If the digitized images are not complete, are not useable, are illegible or do not adhere to Bank's data specifications, the images may not be processed by Bank, and Customer's deposit will be adjusted and notification will be promptly provided to Customer. Customer may then submit the original voided Item for processing or contact the maker to reissue the Item. Bank may change the method of notification as described in this Agreement, including use of Internet sites to be checked by Customer.

9.4. It is Customer's responsibility to understand and build into its transmission schedules the appropriate deadlines necessary to meet the availability schedules of Bank. Customer is further responsible for understanding and building into its transmission schedule the changes in transmission windows required by time changes associated with Daylight Savings Time.

10. Security Procedures. Customer will be solely responsible for establishing, maintaining and following such security protocols as it deems necessary to ensure that output files transmitted directly to Bank are intact, secure and confidential until received by Bank. In addition to the Customer's security protocols, Customer agrees to implement security procedures that Bank may offer to verify the authenticity of any output files transmitted to Bank in the name of Customer. If Bank verifies the authenticity of an output file using security procedures chosen by Customer, then Customer agrees that Bank may rely on and Customer will be obligated on the output file, whether or not the output file was authorized by Customer. Also, if an output file was authorized by Customer, Customer will be obligated on the output file. Customer agrees that the security procedures are intended to verify authenticity and not to detect error.

11. Customer Representations and Warranties. Customer makes the following representations and warranties with respect to each Item processed by Customer pursuant to this Agreement (and, if applicable, any corresponding Electronic Item):

11.1. The Electronic Item is a digitized image of the front and back of the Item and accurately represents all of the information on the front and back of the Item as of the time Customer converted the Item to an Electronic Item;

11.2. The Electronic Item contains all endorsements applied by parties that previously handled the Item in any form for forward collection or return; and

11.3. All encoding, transfer, presentment and other warranties made under applicable law as Bank is deemed to make under applicable law, including without limitation those under the UCC, Regulation CC and the rules of any image exchange network.

11.4. There will be no duplicate presentment of an Item as a digitized image, as a paper negotiable instrument or otherwise and Customer assumes responsibility for any such duplicate presentment of any Item.

12. Fees. Customer will pay to Bank the initial setup and on-going service fees listed in Exhibit B attached. Fees may, at Bank's option, be billed and paid through Bank's account analysis system.

13. Term and Termination.

13.1. The term of this Agreement will commence upon full execution of this Agreement and will continue thereafter for five (5) years, or until terminated as follows, whichever is earlier:

13.1.1. Customer may terminate this Agreement at any time, with or without cause, upon 30 days prior written notice to Bank, (Customer's termination notice period shall be shortened to 25 days if the termination is made in response to a Bank initiated unilateral change in the terms of this agreement or additions to the terms of service made); and

13.1.2. Bank may terminate this Agreement on 5 days written notice to Customer in the case of cause, e.g., fraud or duplicate presentment, and on 30 days prior written notice to Customer for any other reason.

13.2. Any termination will not affect any obligations arising prior to termination, such as the obligation to process any Items or corresponding Electronic Items, that were processed or in the process of being transmitted or collected prior to the termination date, or any returns of the same. Upon termination, Bank may terminate Customer's access to the Product and Services, and Customer will terminate its access to and use of the Product and Services, except to the extent necessary to process and collect Electronic Items that were in process prior to the termination date. Within 30 days after termination of this Agreement, Customer will, at its expense, return to Bank all hardware and equipment provided by Bank for the Service, including scanner, the Documentation and any materials relating to the Documentation in its possession or under its control, destroy all copies of the Documentation and materials relating to the Documentation that cannot be returned, and certify in writing to Bank that all copies have been returned or destroyed. Customer will be responsible and liable to Bank for all lost, stolen or damaged equipment that was provided by Bank to Customer in connection with the Service. Customer agrees not to develop a product or service substantially similar to the Product and Services within 3 years after termination of this Agreement.

13.3. All Sections of this Agreement which are intended by their terms to survive termination of this Agreement, including without limitation Sections 7 through 12, will survive any such termination.

14. Customer Indemnification. Customer will indemnify and hold harmless Bank, its licensors and providers of the Product and Services, and their respective directors, officers, shareholders, employees and agents, against any and all third party suits, proceedings, claims, demands, causes of action, damages, expenses (including reasonable attorneys' fees and other legal expenses), liabilities and other losses that result from or arise out of: (i) the wrongful acts or omissions of Customer, or any person acting on Customer's behalf (including without limitation Customer's Authorized Processor, if any), in connection with Customer's use of the Product or Services or processing of Items under this Agreement, including without limitation (a) the breach by Customer of any provision, representation or warranty of this Agreement, (b) the negligence or willful misconduct (whether by act or omission) of Customer or its Customers or any third party on behalf of Customer, (c) any misuse of the Product or Services by Customer, or any third party within the control or on behalf of Customer, (d) the failure by Customer to comply with applicable state and federal laws and regulations, or (e) any fine, penalty or sanction imposed on Bank by, any clearing house, or any governmental entity, arising out of or connected with any Item (or any corresponding Electronic Item) processed by Bank for Customer or at Customer's instruction (except for a fine, penalty, or cost imposed that was caused by the Bank); (ii) any act or omission of Bank that is in accordance with this Agreement or instructions ~~from~~ Customer (except for a fine, penalty, or cost imposed on the Bank for a Bank action that the Bank knew or should have known would draw a fine, penalty, or cost); (iii) actions by city or its agents,

such as the introduction of a virus that delay, alter or corrupt the transmission of an Electronic Item to Bank, (iv) any loss or corruption of data in transit from Customer or its Authorized Processor to Bank, (v) any claim by any recipient of a Substitute Check corresponding to an Item processed by Customer (or its Authorized Processor, if any) under this Agreement, that such recipient incurred loss due to the receipt of the Substitute Check instead of the Original Check; or (vi) any claims, loss or damage resulting from Customer's breach of, or failure to perform in accordance with, the terms of this Agreement.

- 15. Bank Indemnification.** To the extent Bank's liabilities are insured or bonded as provided in paragraph 15.1 of this Agreement, Bank will indemnify and hold harmless Customer, and its elected and appointed directors, officers, employees and agents, against any and all third party suits, proceedings, claims, demands, causes of action, damages, expenses (including reasonable attorneys' fees and other legal expenses), liabilities and other losses that result from or arise out of: (i) the wrongful acts or omissions of Bank, or any person acting on Bank's behalf, in connection with Bank's provision of the Product or Services or processing of Items under this Agreement, including without limitation (a) the breach by Bank of any provision, representation or warranty of this Agreement, (b) the negligence or willful misconduct (whether by act or omission) of Bank or any third party on behalf of Bank, (c) any misuse of the Product or Services by Bank, or any third party within the control or on behalf of Bank, (d) the failure by Bank to comply with applicable state and federal laws and regulations, or (e) any act or omission of Customer that is in accordance with instructions from Bank, (f) any loss or corruption of data while under Bank or its agent's control; or (g) any claims, loss or damage resulting from Bank's breach of, or failure to perform in accordance with, the terms of this Agreement. For liabilities that are required to be insured or bonded by paragraph 15.1 of this agreement, and are in fact so insured or bonded, Bank's Indemnity obligations shall be limited to the value of the required Insurance or Bonding.

15.1. Insurance: At a minimum, Bank shall at all times during the life of this agreement, maintain the insurance and bonding requirements attached as Exhibit C.

- 16. Disclaimer.** BANK'S REPRESENTATIONS, WARRANTIES, OBLIGATIONS AND LIABILITIES, AND CUSTOMER'S RIGHTS AND REMEDIES, SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. BANK AND ITS LICENSORS HEREBY DISCLAIM, AND CUSTOMER HEREBY WAIVES AND RELEASES BANK, ITS LICENSORS AND THEIR RESPECTIVE OWNERS, OFFICERS AND EMPLOYEES FROM ALL OTHER REPRESENTATIONS, WARRANTIES OF ANY NATURE, OBLIGATIONS AND LIABILITIES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY AND ALL DOCUMENTS, SERVICES, INFORMATION, ASSISTANCE, SOFTWARE PRODUCTS, OR OTHER MATTERS PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION (i) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A SPECIFIC USE, PURPOSE OR APPLICATION, OR OTHER IMPLIED CONTRACTUAL WARRANTY; (ii) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE; (iii) ANY WARRANTIES OF TIMELINESS OR NON-INFRINGEMENT; AND (iv) ANY OTHER WARRANTY WITH RESPECT TO QUALITY, ACCURACY OR FREEDOM FROM ERROR. NOTWITHSTANDING THE GENERALITY OF THE FOREGOING, NEITHER BANK NOR ITS LICENSORS WARRANT THAT OPERATION OF THE PRODUCT WILL BE ERROR-FREE OR THAT ITS OPERATION WILL BE UNINTERRUPTED.

- 17. Bank's Liability.**

17.1. Bank will not be liable to Customer for any of the following: (i) any damages, costs or other consequences caused by or related to Bank's actions that are based on information or instructions that Customer provides to Bank, (ii) any unauthorized actions initiated or caused by Customer or its employees or agents; (iii) the failure of third persons or vendors to perform satisfactorily, other than persons to whom Bank has delegated the performance of specific obligations provided in this Agreement; (iv) any refusal of a Payor Financial Institution to pay an Electronic Item or Substitute Check for any reason (other than the breach of contract, negligence or willful misconduct of Bank), including without limitation, that the Item, Electronic Item or Substitute Check was allegedly unauthorized, was a counterfeit, had been altered, or had a forged signature; (v) any other party's lack of access to the Internet or inability to transmit or receive data;

(vi) failures or errors on the part of Internet service providers, telecommunications providers or any third party's own internal systems, or (vii) any of the matters described in Section 11 above.

17.2. Except as otherwise specifically provided in this Agreement, in no event will either party be liable to the other for any consequential, indirect, incidental, special, exemplary or punitive damages, including without limitation any loss of use or loss of business, revenue, profits, opportunity or good will, under any theory of tort, contract, indemnity, warranty, strict liability or negligence, even if such party has been advised or should have known of the possibility of such damages.

17.3. Customer and Bank acknowledge and agree that the limitations of liability in **this** Section are a bargained for allocation of risk and liability, and agree to respect such allocation of risk and liability. Each party agrees and acknowledges that the other party would not enter into **this** Agreement without the limitations of liability set forth in **this** Section.

18. MISCELLANEOUS.

18.1. Assignment. Neither party may assign its rights or obligations under **this** Agreement without the written consent of the other party; provided, however, Bank may assign or transfer **this** Agreement, by operation of law or otherwise, to any person that becomes the successor entity of Bank, in connection with a change of control (which shall include a direct or indirect transfer of all or substantially all of Bank's stock or assets to a third party, a merger, reorganization or other such transaction, or any such transaction by a parent corporation of Bank) and Customer hereby consents to such assignment or transfer in advance. The legal successor(s) resulting from such aforementioned assignment or transfer will succeed to and be bound by **this** Agreement. Bank may subcontract any of the work, services, or other performance required of Bank under this contract without the consent of Customer. In the event of a change in service provider pursuant to **this** paragraph, City may immediately terminate agreement.

18.2. Consent to Breach Not Waived. Neither party will, by the lapse of time, and without giving written notice, be deemed to have waived any of its rights under this Agreement. No waiver of a breach of **this** Agreement will constitute a waiver of any prior or subsequent breach of **this** Agreement.

18.3. Notices. Notices must be in writing, must be delivered according to clause (a), (b) or (c) below, and must be delivered to the address set forth on the signature page of this Agreement, or to such other address as a party may designate by notice in accordance with this provision. All notices under **this** Agreement will be deemed given on the date of (a) sending by regular U.S. mail, (b) delivery by a nationally recognized overnight courier, or (b) delivery by certified mail, return receipt requested.

18.4. Force Majeure. Neither party will be liable to the other for any delay or interruption in performance as to any obligation in this Agreement resulting from governmental emergency orders, judicial or governmental action, emergency regulations, sabotage, riots, terrorist action, vandalism, labor strikes or disputes, acts of God, fires, electrical failure, major computer hardware or software failures, equipment delivery delays, acts of third parties, or delays or interruptions in performance beyond its reasonable control.

18.5. Entire Agreement: Amendment. **Bank** and Customer may amend **this** Agreement only by written amendment signed by both parties. This Agreement will not be more strongly construed against either party, regardless of who is more responsible for its preparation.

18.6. Severability. If any part of this Agreement is found to be illegal or unenforceable, then that part will be curtailed only to the extent necessary to make it, and the remainder of the Agreement, legal and enforceable.

18.7. Applicable Law. This Agreement will be governed by federal law, and to the extent not preempted, by internal laws of the State of California (without regard to that state's principles of conflicts of law).

18.8. Independent Contractor. Nothing in this Agreement creates a joint venture, partnership, principal agent or mutual agency relationship between the parties. No party has any right or power under this Agreement to create any obligation, expressed or implied, on behalf of the other party.

[signature page on following page]

18.9. Headings. The titles or captions used in **this** Agreement are for convenience **only** and will not be used to construe or interpret **any** provision hereof.

EXECUTED **as** of the last date indicated below.

FARMERS & MERCHANTS BANK OF CENTRAL CALIFORNIA	CUSTOMER
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____
	Address: _____ _____
	Phone: _____
	Fax: _____



EXHIBIT A
DEFINITIONS

"ACH" means Automated Clearing House.

"BusinessDays" has the same meaning as "business day" under Regulation CC and means a calendar day other than a Saturday or a Sunday, January 1, the third Monday in January, the third Monday in February, the last Monday in May, July 4, the first Monday in September, the second Monday in October, November 11, the fourth Thursday in November, or December 25. If January 1, July 4, November 11, or December 25 fall on a Sunday, the next Monday is not a business day.

"Confidential Information with respect to either party as recipient" means any information obtained by, or disclosed or made available to such party (whether in writing, verbally or by observation of objects or processes) from or by the other party, that is accompanied by a clear indication that the disclosing party considers the information to be confidential or proprietary, or is of a type that the recipient should reasonably consider it the confidential or proprietary information of the disclosing party or its licensors. Confidential Information does not include information that (i) is or becomes generally available to the public other than as a result of a disclosure by the recipient; (ii) was in the recipient's possession before the time of disclosure, (iii) becomes available to the recipient on a non-confidential basis from another source, provided that the recipient has no actual knowledge that the source of such information was bound by and in breach of a confidentiality obligation with respect to such information; or (iv) is independently developed by the recipient without reference to or use of the disclosing party's other Confidential Information. The Documentation and any materials relating to the Documentation will be deemed the Confidential Information of Bank for purposes of this Agreement. Any nonpublic personal information regarding Customer's Customers shall be deemed the Confidential Information of Customer for purposes of this Agreement.

"Documentation" means all documentation, the user manual, any other manuals, all instructions (including on-line instructions) relating to the Product and Services which Bank may provide to Customer from time-to-time in connection with the Product or Services.

"Electronic Item" means a digitized image of an Item and any Image Exchange Item or other electronic data arising from an Item.

"Endpoint" means any Federal Reserve Bank, financial institution, local clearing house, courier or other entity or location for the delivery of cash letters or other presentment of Electronic Items or Substitute Checks.

"Image Exchange Item" means a digitized image of an Item cleared and settled directly with a Payor Financial Institution without conversion to a Substitute Check.

"Item" means a draft that is payable on demand, drawn on or payable through or at an office of a United States Financial Institution, whether negotiable or not, and payable or endorsed to Customer, and includes Original Checks and Substitute Checks. Such term does not include Noncash Items or Items payable in a medium other than United States money.

"Noncash Item" means an Item that would otherwise be an Item, except that: (i) a passbook, certificate or other document is attached; (ii) it is accompanied by special instructions, such as a request for special advice of payment or dishonor; (iii) it consists of more than a single thickness of paper, except an Item that qualifies for handling by automated check processing equipment; or (iv) it has not been preprinted or post-encoded in magnetic ink with the routing number of the Payor Financial Institution.

"Original Check" means the first paper Item issued with respect to a particular payment transaction.

"Payor Financial Institution" means the United States Financial Institution ordered in an Item to make payment to the payee(s) named on the Item.

"Product" means collectively the procedures, protocols, and software used by Bank and its licensors and contractors in connection with the electronic processing of Items, and includes without limitation the Services.

"RegulationCC" means 12 C.F.R. ~~Part~~ 229, as it may be amended from time to time.

"Services" means the services described in this Agreement, to be provided by Bank to Customer to enable the processing of Items digitally as Image Exchange Items through image exchange networks or through creation of Substitute Checks and presentment to established Endpoints.

"Software" means any software which may be offered or required by Bank for use in receiving, validating and packaging images and data from a bulk file to be forwarded to Bank for additional processing.

"Substitute Check" means a paper reproduction of an Item that satisfies the requirements and definition of "substitute check" set forth in Regulation CC.

"UCC" means the Uniform Commercial Code as enacted and amended in the state whose law governs interpretation of this Agreement.

"United States Financial Institution" means (i) any person, located in the United States, engaged in the business of banking; (ii) a Federal Reserve ~~Bank~~, (iii) a Federal Home Loan Bank; and (iv) to the extent it acts as a payor, the U.S. Treasury, the U.S. Postal Service, or a State or local government.

**EXHIBIT B
FEES**

REMOTE DEPOSIT CAPTURE

Service Provided	Unit Price
Monthly Maintenance	\$50.00
CAR/LAR Item Processing	\$0.03
Check 21 Items Processed	WAIVED
Remote Deposit Corrections	\$0.08
Remote Deposit MICR Repair	\$0.08
Terminal Option Eason One Capture 30dpm*	WAIVED

* ~~Bank~~ shall provide six (6) terminals at no cost to the City

EXHIBIT C
INSURANCE REQUIREMENTS

Farmers & Merchants Bank
Financial Institution Coverages
May 17,2011

	Limit	Retentions	
Directors & Officers Liability			
Each Policy Year Limit of Liability	\$10,000,000		
Each D&O:	Included	\$0	
All D&O's:	Included	\$0	
Company Liability	Broad Form Company Liab		
Corporate Reimbursement:		\$150,000	
Broad Form Company Liability Coverage			Separate
Each Policy Year Limit of Liability	\$10,000,000	\$150,000	Limit
3rd Party Liability	Included		
Depositor Liability (E&O)	Included		
Fiduciary Liability Coverage			Separate
Each Policy Year Limit of Liability	\$10,000,000	\$5,000	Limit
Insurance Services Liability			
Each Policy Year Limit of Liability	No Coverage		
Brokerage/Advisory Services Liability			
Each Policy Year Limit of Liability	\$10,000,000	\$150,000	Sublimit
Employment Practices Liability			
Each Policy Year Limit of Liability	\$5,000,000	\$100,000	Separate
3rd Party Liability	Included		
Combination Safe Depository Policy			
Liability & Property Coverage Including Money			Sublimit
Internet Banking Liability			
Basic Internet Banking Liability	\$5,000,000	\$100,000	
Social Networking	\$1,000,000	\$100,000	
Correction Expense	\$25,000	\$5,000	
Optional Coverage			
Business Interruption	\$500/hour	24 hr retenfion	

	\$500,000	Aggregate
Liability Mitigation Expense	\$700,000	\$50,000
Financial Institution Bond		
Fidelity with EDP (includes Trading Loss)	\$10,000,000	\$150,000
On Premises	\$10,000,000	\$150,000
In Transit	\$10,000,000	\$150,000
Counterfeit Money	\$10,000,000	\$150,000
Forgery or Alteration (incl Counterfeit Check)	\$10,000,000	\$150,000
Unauthorized Signature	\$10,000,000	\$150,000
Electronic/Computer Systems	\$10,000,000	\$150,000
Securities with Loan Participation	\$10,000,000	\$150,000
Extortion - Persons & Property	\$5,000,000	\$25,000
Fraudulent Mortgages	\$10,000,000	\$150,000
On/Off Premises ATM	\$125,000	\$5,000
Servicing Contractors	\$5,000,000	\$100,000
Money Order Issuers	\$500,000	\$100,000
Check Kiting Fraud	\$250,000	\$35,000
Stop Payment Legal Liability	\$500,000	\$5,000
Transit Cash Letter	\$500,000	\$0
Safe Deposit Box - Liability & Property w/Money	\$5,000,000	\$0
Audit Expense	\$25,000	\$0
Claims Expense	\$10,000	\$0
Court Costs and Attorney's Fees	\$10,000,000	\$150,000
Indemnity for Directors and Officers	\$2,500	\$0
Reward Payment	\$2,500	\$0
Excess Liability- \$5m xs \$10m		
Excess Liability over D&O, Broad Form Company		
Liability and Fiduciary Coverages	\$5,000,000	

RESOLUTION NO. 2011-184

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING
THE CITY MANAGER AND TREASURER TO EXECUTE AGREEMENTS
FOR REMIT PLUS SOFTWARE, MERCHANT CARD SERVICES,
AND REMOTE DEPOSIT SERVICES WITH JACK HENRY AND
ASSOCIATES, INC.; ELAVON, INC.; AND FARMERS & MERCHANTS
BANK OF CENTRAL CALIFORNIA AND DIRECTING THE
CITY MANAGER AND TREASURER TO NEGOTIATE A BANKING
SERVICES AGREEMENT WITH FARMERS & MERCHANTS BANK

=====

WHEREAS, City desires to purchase Remit Plus software through Jack Henry and Associates, Inc. to operate and manage its remittance processing function; and

WHEREAS, City desires to contract with Elavon, Inc. to process debit and credit card transactions at multiple City facilities; and

WHEREAS, City desires to contract with Farmers & Merchants Bank of Central California for remote deposit services at multiple City facilities; and

WHEREAS, all vendors have submitted proposals that meet City's needs and are cost effective; and

WHEREAS, City desires to formalize its banking services with an agreement with Farmers & Merchants Bank based upon the following basic terms:

- Five-year term with option to extend for up to two years,
- Fixed pricing for the term of the agreement,
- Basic banking service to include, but not be limited to, deposit processing, electronic fund transfers, direct deposit, positive pay services, account reconciliation, and appropriate collateralization,
- Earnings credit rate of at least 0.75%,
- Clearly defined reserve requirements, exposure limitations, and security interest levels, and
- Liability commensurate with exposure.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lodi does hereby authorize the City Manager and Treasurer to execute agreements for Remit Plus software, merchant card services, and remote deposit services with Jack Henry and Associates, Inc.; Elavon, Inc.; and Farmers & Merchants Bank of Central California; and

BE IT FURTHER RESOLVED that the City Council of the City of Lodi directs the City Manager and Treasurer to negotiate a banking services contract with Farmers & Merchants Bank based upon the basic terms noted above.

Dated: November 16, 2011

=====


I hereby certify that Resolution No. 2011-184 as passed and adopted by the City Council of the City of Lodi in a regular meeting held November 16, 2011, by the following votes:

AYES: COUNCIL MEMBERS – Hansen, Katzakian, Nakanishi, and
Mayor Johnson

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – Mounce

ABSTAIN: COUNCIL MEMBERS – None



RANDI JOHL
City Clerk



Banking Services

Lodi City Council
November 16, 2011





Current State

- RFP issued February 2011
- Recommendations to Council May 2011
 - Referred back to staff



Today's Recommendations

- Optional Services
 - Lockbox Alternative
 - Jack Henry and Associates
 - Merchant Card Services
 - Elavon
 - Remote Deposit Services
 - F&M Bank
- Mandatory Services
 - Negotiate Banking Services Contract with F&M Bank



Lockbox Alternative

- Currently process in-house with antiquated equipment
- Recommended solution
 - Remit Plus
 - Simple equipment and software
 - Continue processing in-house



Lockbox Alternative Costs

- Bank of America solution
 - \$182,661 over 5 years
- Jack Henry solution
 - \$99,000 over 5 years



Merchant Card Services

- Currently provided by Elavon under a Tiered and Category pricing strategy
- Recommended solution
 - Elavon, under an Interchange Plus pricing strategy
 - Expand usage to departments not currently directly accepting payments
 - Includes back-dating pricing for 12 months



Merchant Card Services Costs

- Elavon/Bank of the West solution
 - \$22,032 over 5 years (plus interchange costs)
- Elavon/F&M Bank solution
 - \$19,129 over 5 years (plus interchange costs)
 - Additional \$12,000 refund of past fees



Remote Deposit Capture

- Service not currently used
- Recommended solution
 - F&M Bank provided service
 - Allows customers to pay certain services at locations other than Finance
 - Increases cash availability for City
 - Reduces processing costs and time



Remote Deposit Capture Costs

- Bank of the West solution
 - \$12,144 over 5 years
- F&M Bank solution
 - \$7,702 over 5 years
 - Hardware provided at no cost to City



Banking Services Contract

- Currently operate with a variety of agreements for specific services through F&M Bank
 - No comprehensive agreement for services
- Recommended solution
 - Negotiate a comprehensive banking services agreement with F&M Bank



Banking Services Contract

- Basic Business Terms
 - 5 year term, with up to 2 year extension
 - Fixed pricing for the term of the agreement
 - Basic banking services
 - Earnings credit rate of at least 0.75%
 - Clearly defined reserve requirements, exposure limits and security interest levels
 - Liability commensurate with exposure



Action Requested

- Adopt resolution authorizing City Manager and Treasurer to execute agreements for Remit Plus software, Merchant Card Services and Remote Deposit Services with Jack Henry and Associates, Inc, Elavon, Inc, and F&M Bank and Direct City Manager and Treasurer to negotiate a Banking Services Contract with F&M Bank



Questions?
